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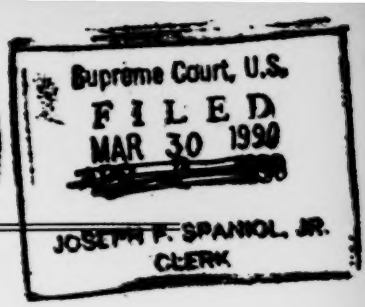

In The

Supreme Court of the United States

October Term, 1989

RANDALL HANK WILLIAMS,

Petitioner,

vs.

CATHERINE YVONNE STONE,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Alabama

PETITION FOR WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED

A. Retroactivity Issues

1. WHETHER MODERN EQUAL PROTECTION DOCTRINE REGARDING THE INTESTACY RIGHTS OF OUT-OF-WEDLOCK CHILDREN IS TO BE APPLIED RETROACTIVELY TO ESTATES THAT, UNLIKE THE OPEN ESTATE CONSIDERED IN *REED V. CAMPBELL*, HAVE BEEN CLOSED BY JUDICIAL DECREE FOR A PERIOD OF TEN YEARS.

2. ASSUMING FULL RETROACTIVITY OF MODERN EQUAL PROTECTION DOCTRINE REGARDING THE INTESTACY RIGHTS OF OUT-OF-WEDLOCK CHILDREN, WHETHER ALABAMA'S INTESTACY LAWS IN EFFECT AT THE TIME OF DECEDENT'S DEATH IN 1953 AND PRIOR TO THE CLOSING OF DECEDENT'S ESTATE IN 1975 VIOLATED THE EQUAL PROTECTION CLAUSE – *I.E.*, WHETHER *TRIMBLE V. GORDON* OR *LALLI V. LALLI* PROVIDES THE APPROPRIATE PRECEDENT.

3. WHETHER, CONSISTENT WITH THE FOURTEENTH AMENDMENT'S GUARANTEE OF DUE PROCESS AND IN APPARENT CONFLICT WITH FOOTNOTE 8 OF *REED V. CAMPBELL*, ALABAMA CAN RETROACTIVELY APPLY 1982 LEGISLATION REGARDING INTESTACY TO A DEATH THAT OCCURRED IN 1953 SO AS TO UNDO AND TERMINATE RIGHTS OF INHERITANCE THAT VESTED PURSUANT TO BINDING COURT ORDERS ENTERED IN 1967-68 IN PROCEEDINGS TO WHICH PETITIONER AND RESPONDENT (THROUGH A GUARDIAN AD LITEM)

I. QUESTIONS PRESENTED – Continued

WERE BOTH PARTIES AND REPRESENTED BY COUNSEL.

B. **Due Process Issues**

1. *Jurisdictional Issues*

a. WHETHER IT IS A VIOLATION OF DUE PROCESS FOR THE ALABAMA SUPREME COURT, IN AN APPEAL TO WHICH PETITIONER WAS NOT A PARTY OR PRIVY, TO ORDER PETITIONER TO RELINQUISH A PORTION OF AN ESTATE THAT HAD BEEN VESTED IN HIM BY THREE PREVIOUS, FINAL ALABAMA COURT DECREES.

b. WHETHER, IN THE ABSENCE OF PERSONAL JURISDICTION OVER AN AFFECTED PARTY (PETITIONER) BECAUSE NO APPEAL WAS TAKEN TO THE ALABAMA SUPREME COURT FROM A TRIAL COURT JUDGMENT TO WHICH PETITIONER WAS A PARTY, THE ALABAMA SUPREME COURT CAN, DESPITE THIS COURT'S DECISIONS IN *HANSON V. DENCKLA* AND *SHAFFER V. HEITNER*, ASSERT *IN REM* JURISDICTION AS A VEHICLE FOR EVADING THE CONSTITUTIONAL CONSTRAINTS IMPOSED ON COURTS FOR THE EXERCISE OF PERSONAL JURISDICTION.

2. *Substantive Due Process/Takings Issues*

a. WHETHER, EVEN IF ERRONEOUSLY ADJUDICATED, THE UNAPPEALED FINAL JUDGMENTS ENTERED ON BEHALF OF PETITIONER, IN LITIGATION IN WHICH RESPONDENT WAS A PARTY AND WAS

I. QUESTIONS PRESENTED – Continued

REPRESENTED (BY A GUARDIAN AD LITEM IN 1967-68), CONFER "PROPERTY" RIGHTS PROTECTED BY THE FIFTH AND FOURTEENTH AMENDMENTS.

b. WHETHER, IF A "PROPERTY" INTEREST EXISTS, THE DECISION OF THE ALABAMA SUPREME COURT CONSTITUTES A TAKING OF PETITIONER'S PROPERTY IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS.

c. WHETHER THE GENERAL PRINCIPLE THAT A JUDGMENT WILL NOT BE ALTERED ON APPEAL IN FAVOR OF A PARTY WHO DID NOT APPEAL, ENFORCED ROUTINELY IN FEDERAL LITIGATION IN SUCH DECISIONS OF THIS COURT AS *UNITED STATES V. STANLEY* AND *FEDERATED DEPARTMENT STORES, INC. V. MOITIE*, IS OF CONSTITUTIONAL DIMENSION SO THAT, WHEN ITS DISREGARD HAS THE CONSEQUENCE OF UNDOING OR DIVESTING SETTLED EXPECTATIONS ARISING FROM CONSTITUTIONALLY PROTECTED PROPERTY RIGHTS, A VIOLATION OF DUE PROCESS ENSUES.

3. *Procedural Due Process Issues*

a. WHETHER PETITIONER'S LACK OF NOTICE AND OPPORTUNITY TO BE HEARD IN THE PROCEEDING BEFORE THE ALABAMA SUPREME COURT, WHICH PURPORTED TO FINALLY ADJUDICATE RIGHTS OF PETITIONER ADVERSE TO HIS INTERESTS, VIOLATES DUE PROCESS UNDER THIS COURT'S DECISIONS IN SUCH CASES AS *MULLANE V. CENTRAL*

I. QUESTIONS PRESENTED – Continued

HANOVER BANK & TRUST CO. AND *TULSA PROFESSIONAL COLLECTION SERVICES, INC. V. POPE.*

b. WHETHER THE FAILURE OF THE ALABAMA SUPREME COURT TO PROVIDE A FORUM IN WHICH PETITIONER COULD ADJUDICATE HIS CLAIMS AND BE HEARD ON THE MERITS CONSTITUTED A DEPRIVATION OF PETITIONER'S PROPERTY INTERESTS IN VIOLATION OF DUE PROCESS UNDER THIS COURT'S DECISIONS IN SUCH CASES AS *FUENTES V. SHEVIN* AND *BRINKERHOFF-FARIS TRUST & SAVINGS CO. V. HILL.*

PARTIES TO THE PROCEEDING

The parties to this proceeding are Randall Hank Williams ("Petitioner"), one of the plaintiffs in the original action below and the Counter-Defendant in the counterclaim submitted in connection therewith, and Catherine Yvonne Stone ("Respondent"), the defendant in the original action below, and the counter-claimant in the counterclaim and the third party plaintiff in the third party action submitted in connection therewith. The remaining parties to the proceedings below were original plaintiffs Welsey H. Rose and Roy Acuff, as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc. and Milene Music, Inc., both Tennessee corporations, and third party defendants Gulf American Fire & Casualty Company, American States Insurance Company, Jones, Murray & Stewart, P.C., and Irene Smith. An additional third party defendant, the Estate of Robert B. Stewart, was voluntarily dismissed by Respondent. Petitioner does not believe that any of these parties below have any interest in the outcome of this Petition.

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No. _____

In The

Supreme Court of the United States

October Term, 1989

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Petitioner,

vs.

CATHERINE YVONNE STONE,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Alabama

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions this Court to issue a writ of certiorari to review the judgments and decisions of the Supreme Court of Alabama released on July 5, 1989 and November 9, 1989 in the matter of *Catherine Yvonne Stone v. Gulf Amer. Fire and Casualty, et al.*, No. 87-269.

IV. OPINIONS BELOW

The decisions of the Alabama Supreme Court in *Catherine Yvonne Stone v. Gulf Amer. Fire and Casualty Co., et al.*, are reported at 554 So.2d 346 (Ala. 1989) and are reproduced in Appendices A-1 and C-1. (The Appendix shall hereinafter be cited as App.) The unreported orders of the

Circuit Court of Montgomery County, Alabama are reproduced in App. B-1 and B-2.

V. JURISDICTION

The original judgment of the Supreme Court of Alabama in *Catherine Yvonne Stone v. Gulf Amer. Fire and Casualty Co., et al.* was entered on July 5, 1989. The judgment "On Application for Rehearing" was entered on November 9, 1989. By order, dated January 25, 1990, this Court granted an extension of time within which to file this Petition for Writ of Certiorari unto and including March 30, 1990. Jurisdiction to review the judgments of the Supreme Court of Alabama by writ of certiorari is conferred upon this Court by 28 U.S.C. § 1257(a) and by common law writ of certiorari pursuant to 28 U.S.C. § 1651(a).[1]

VI. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This action involves *U.S. Const.*, amend V, and *U.S. Const.*, amend XIV, § 1, copies of which are reproduced in

[1] In the event this Court finds that the Petitioner's status as a non-party to the appeal before the Alabama Supreme Court prevents consideration of this case under statutory certiorari, the Petitioner urges this Court to issue a common law writ of certiorari pursuant to 28 U.S.C. § 1651(a). Since the trial court's dismissal of the third party action was affirmed on appeal, it is unlikely that either the third party defendants or Respondent would seek certiorari. The existence of a federal question, substantial injustice and the fact that Petitioner is unable to find relief in any other court, provide the circumstances necessary for the common law writ. The Alabama Supreme Court has usurped its power in this proceeding. This is precisely the situation which the common law writ of certiorari is designed to address. *DeBeers Mines v. United States*, 325 U.S. 212, 217 (1945).

App. D-1. It also involves the retroactive application and/or interpretation of Ala. Code §§ 26-11-1, 26-11-2, 26-17-6 and 43-8-48 (1975), copies of which are also reproduced in App. D-1.

VII. STATEMENT OF THE CASE

A. Preliminary Statement

In her dissent below, Alabama Supreme Court Justice Janie L. Shores decried what she termed the majority's "disregard of the law" in this case. (App. at A-1.56). Justice Shores aptly observed that "every rule of law extant at every critical time" was "against [Respondent's] position." Justice Shores felt constrained not to "overlook" the law, concluding that, in its rush to do what it perceived as the "right thing," the Alabama Supreme Court (by a 4-2 vote, with three recusals on the rehearing) reached its bizarre result "in a disregard for all law." (App. at C-1.16).

Petitioner asks this Court to consider what constraints constitutional principles impose on a state supreme court's practice of "Feel-Good" jurisprudence.

Just how has the Alabama Supreme Court placed itself above the law? It has rendered final judgment to Petitioner's prejudice in a proceeding to which he was not a party. Then, when confronted with the embarrassingly inconvenient strictures of due process, the court, much like the skillful illusionist, pulled a doctrinal rabbit out of its hat – it concluded that its unjudicious conduct, at odds with core due process principles, could be salvaged by incantation of the Latin term "in rem." A more descriptive Latin term would be use of a doctrinal *deus ex machina*.

No matter how frequently or sanctimoniously chanted, "in rem" is surely no mantra that a court can intone to circumvent the customary due process requirements of notice and opportunity to be heard before one's

long-vested property rights are unceremoniously stripped away. The label "in rem" cannot legitimize the fundamental violations of core due process values that are so painfully and palpably present in this proceeding.

Further, in its scythe-like attack on what it apparently considered to be the underbrush of settled law and judicially-vested expectations, the Alabama Supreme Court wantonly undid and ignored judgments long-since final, two of more than twenty years' standing. Without briefing (by any party) on the issues (App. G-2, G-3, G-4, G-5, and G-6), it erroneously applied *Trimble v. Gordon*, 430 U.S. 762 (1977), retroactively to an estate that had been closed, with judicial approval, since 1975 (and to an intestate death that occurred in 1953). And, it applied legislation enacted years after the closing of the estate retroactively so as to upset years of settled expectations without so much as providing Petitioner, whose rights were abrogated by all this creative judicial ad hocracy, with an opportunity to present his case in court.

This is not law, it is (to follow the Alabama Supreme Court's lead to the Latin) judicial *ipse dixit* – wishful thinking masquerading as law. Despite the understandable attempt to confine this precedent to what are described as the "unique facts" of this case, principles established in one case can have a perverse application in others. The troublesome principles of retroactivity and constitutional law cannot be easily cabined. On the contrary, the decision in this case will likely be as far-reaching as it is far-fetched. Constitutional cancers, like their biological counterparts, have a way of spreading in all sorts of destructive ways – some foreseeable and some not. This Court must step in to hear and rule on the critical constitutional issues raised by this important matter. This case, furthermore, provides an excellent vehicle for rationalizing the law of retroactivity in this area, much as has been done in the criminal area.

B. Statement of Material Facts

On January 1, 1953, country music legend Hiriam "Hank" Williams ("Hank Sr.") died intestate. (App. at H-1.1). By agreement dated October 15, 1952, Hank Sr. agreed to support the as-yet-unborn child of Bobbie W. Jett. (App. at A-1.6). While acknowledging the possibility of paternity, Hank Sr. expressly included a nonadmission of paternity in the 1952 Agreement. (App. at A-1.7). In 1952, Alabama law would have permitted Hank Sr. to legitimate the unborn child and allow her to inherit from him by declaring in writing that he recognized the child as his own. (App. at A-1.41). He did not do so. (App. at A-1.17).

Respondent, Ms. Jett's out-of-wedlock child, was subsequently adopted by Hank Sr.'s mother. (App. at A-1.14 and A-1.15). After the death of her first adoptive mother, Respondent was adopted by Mr. and Mrs. George Wayne Deupree, an upper-middle class family from Mobile, Alabama. (App. at B-1.7). Petitioner Randall Hank Williams, Jr. ("Hank Jr."), Hank Sr.'s son by his first wife Audrey Williams, was three years old at the time of his father's death.

In 1967 the right to inherit from Hank Sr. became the subject of judicial proceedings in Alabama. Respondent was vigorously represented in the matter by a court-appointed guardian ad litem. (App. H-5). The Court was advised of the existence of Respondent (App. at H-4.1) and, after a full hearing, held that Hank Jr. was "the sole heir of his father . . . and is the only beneficiary of his estate . . . " (App. at H-6.3). The court noted that there had not been "sufficient compliance with the requirements" for legitimation under Alabama law to "give . . . any right of inheritance" to Respondent. (App. at H-6.2). The court found that "the child in question" had no legal right to "receive any part of [Hank Sr.'s] estate." (App. at H-6.2).

At the insistence of the Deuprees, Respondent's adoptive parents (App. H-7), the trial judge denied the

guardian ad litem's request for leave to appeal.[2] (App. H-8 and H-9). The December 1, 1967 decision therefore became final under Alabama law.

On January 30, 1968, in a matter involving the guardianship estate of Hank Jr., the same court held that Respondent did not "have any right in the copyrights or renewals of those rights of the late [Hank] Williams." (App. at I-5.3). The court noted that Respondent had been adopted ten years previously (by the Deuprees), and that the adoptive parents "were fully informed" of the proceedings and "chose not to pursue any action in regard to [the guardianship] proceedings." (App. at I-5.4). Despite the vigorous arguments presented by the same guardian ad litem on her behalf (App. I-4), the court ruled that Respondent was "not an heir of the late [Hank] Williams within the meaning of the Copyright Law." (App. at I-5.5).

Again at the insistence of the Deuprees (App. H-7), no appeal was taken. The January 30, 1968 decree became final under Alabama law.

From and after 1968, periodic distributions of the assets of Hank Sr.'s estate were made to Hank Jr. and approved by the Alabama Circuit Court. With respect to one such distribution in 1972 (App. H-10), that court reiterated its awareness of Respondent's existence and reaffirmed its 1967-68 decisions that Hank Jr. was the sole heir of his father. (App. at H-11.2). The court declared its prior rulings consistent with the intervening decision in *Labine v. Vincent*, 401 U.S. 532 (1971), (upholding an intestate succession provision that subordinated rights of acknowledged out-of-wedlock children to those of other relatives of the parent). (App. at H-11.1 and H-11.2).

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[2] Alabama law, to avoid the wasting of estates, provided that a guardian ad litem could be held liable for additional costs for prosecuting an unsuccessful appeal without prior leave of court. (App. at A-1.34).

In August 1975, Hank Sr.'s estate was closed by order of the court. (App. H-14). All remaining assets were distributed to the sole heir, Hank Jr. (App. H-13), and the administrator was discharged. (App. H-14).

In January 1974, upon reaching the age of 21, Respondent received money from the estate of Hank Sr.'s mother (her first adoptive mother). In connection therewith, Respondent was informed by Mrs. Deupree that she might be the out-of-wedlock child of Hank Sr. (App. at B-1.14). As a result thereof, Respondent read various publications about her alleged natural father that discussed an out-of-wedlock child and the 1967-68 proceedings (App. at J-1.7 and J-1.8), but she did not pursue any legal claims related to her possible relationship to Hank Sr., even stating in 1979 that she did not want anyone to associate her with her alleged father.[3] By 1985, when Respondent, at age 32, made her first claim to Hank Sr.'s estate, it had been closed for ten years.[4]

C. Statement of the Proceedings

On September 10, 1985, Hank Jr. and representatives of the assignees of certain of his rights filed an action in Alabama to clarify the legal status of Respondent's asserted rights of inheritance from Hank Sr. (App. F-1). On October 14, 1986, Respondent counterclaimed against Hank Jr. to establish her status as an heir to Hank Sr.'s long-since-closed estate. (App. F-2). On the same day,

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[3] Respondent's motive for dissociating herself from Hank Sr. is unexplained. (App. at J-1.14 and J-1.15). However, in the privileged social circles in which she moved, Hank Sr. was undoubtedly deemed a low-brow hillbilly.

[4] In the related copyright case, the District Court observed that "a cynic might suggest that [Respondent] slumbered peacefully, and knowingly, on her rights until she was awakened by the attractive sound of a ringing cash register." (App. at J-1.13).

Respondent filed a third party complaint against the former administrators of the estate and their attorneys and sureties, alleging fraud and seeking indemnification. (App. F-3).

On July 14, 1987, the trial court granted summary judgment (App. F-4 and F-5) to Hank Jr., et al., holding that he was the sole heir to the estate. (App. B-1). The court simultaneously ruled against Respondent on her counterclaim (on the same issue).[5] The court further held that Respondent could not inherit from Hank Sr. "irrespective of whether the Court applies existing law or the law of 1952." (App. at B-1.18).

The trial court conceded that a determination of paternity would not affect the outcome but concluded that Respondent was the biological daughter of Hank Sr. (App. at B-1.20 and B-2.3). As all parties had achieved a desired result which they did not want to risk, no appeal was taken by any party from the final judgments (a) that Respondent was not a legal heir of Hank Sr. and that Hank Jr. was the only legal heir, and (b) that Respondent was, without legal consequence, the biological daughter of Hank Sr. Those judgments therefore became final under Alabama law.

In granting summary judgment to the third party defendants, the court held that Respondent's allegations of fraudulent concealment were irrelevant since any further disclosure with respect to Respondent would have been legally "superfluous." (App. at B-1.19). *See* note 9, *infra*.

Respondent elected only to appeal from the decision against her in the third party indemnification action. (App. G-1). Only that third party action was before the

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[5] The court found that the claim by Respondent "that she is an heir and entitled to inherit was decided in the 1967 proceeding in which the parties were the same." Accordingly, Respondent was found to be "barred from relitigating that identical issue and claim in this case." (App. at B-1.18).

Alabama Supreme Court in this case. Hank Jr. was not a party to the appeal and not involved at all in that appellate proceeding.

With disregard for the finality of the unappealed 1987 Circuit Court decision, the Alabama Supreme Court found Respondent to be a legal heir of Hank Sr. and awarded her a proportionate share of Hank Sr.'s estate from and after August 5, 1985. (App. at A-1.49, A-1.53 and A-1.55). That judgment was (a) in a proceeding that reversed an unappealed determination that Respondent was not a legal heir; (b) in conflict with the final determinations in 1967-68 that Respondent was not a legal heir of Hank Sr.; and (c) in an appellate proceeding in which Hank Jr. was not a party or involved in any way, even though the appeal finally and adversely adjudicated his interests (which were not the subject of such proceedings or otherwise before the court), thereby stripping him of rights vested at least as early as 1967-68.

The Alabama Supreme Court created a retroactive duty to disclose the existence of Respondent even though she had no legal rights or relationship to Hank Sr. or his estate during the period 1953-1967.[6] After creating it, the court held the third party defendants to have fraudulently breached the duty of disclosure. But the showing of fraud, by itself, would prove nothing if there were no legal consequences. Fraud is only significant if it causes some injury. The injury, according to the Alabama Supreme Court, was that the courts in 1968 were denied the opportunity to create new law which would have allowed Respondent to inherit from Hank Sr.

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[6] Of course, such disclosure had in fact been made as reflected in the active advocacy of the guardian ad litem in the 1967-68 proceedings. (App. H-5, H-8 and I-4). The decision on whether to approve an appeal was in fact made with full knowledge of the existence of Respondent. (App. H-9). In any event, the alleged duty was not on Hank Jr. but on the third-party defendants.

The Alabama Supreme Court used its fraud theory to vacate the 20-year-old decrees, but then had to determine what law to apply. It concluded that it would not apply the law existent at the time of the 1967-68 proceedings. Had that happened, Respondent would have obtained no relief. Instead, the court applied *Trimble* retroactively to conclude that the 1967-68 Alabama law was unconstitutional. It then determined that the law as of 1989 should be applied retroactively to the 1967-68 proceedings, thereby allowing Respondent to inherit. (App. at A-1.51).

It was under this "theoretical" model that Hank Jr. was deprived of property in a proceeding to which he was not a party and in which he was not given an opportunity to be heard.[7]

Deprived of property in an action to which he was not a party, Hank Jr. was without any recognized procedure to seek an opportunity to be heard. Even so, he filed a petition with the Alabama Supreme Court for leave to appear ("Petition for Leave"). (App. G-7). That petition raised numerous issues, including due process violations. The Petition for Leave was Hank Jr.'s first opportunity to raise these federal questions.

While admitting that Respondent did not appeal the judgments to which Hank Jr. was a party, in its second opinion the Alabama Supreme Court dismissed Hank Jr.'s due process arguments by holding, for the first time, that

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[7] One cannot help but note the irony of the proceeding below. The Alabama Supreme Court vacated twenty-year-old decisions based upon the alleged fraudulent conduct of the third party defendants. It then affirmed a dismissal of the third party fraud claims against those same third party defendants who were the actual perpetrators of the alleged fraud. (App. at A-1.56 and C-1.14). Thus, the actual parties to the third-party appeal were exonerated from legal responsibility, but their conduct caused the Alabama Supreme Court to upset prior final decrees to the disadvantage of Hank Jr., a non-party to the appeal.

the third party action was *in rem* (App. at C-1.8) (even though the property against which relief was sought was in no way before the court), and, more explicitly than in its original opinion, that *Trimble v. Gordon* should be applied retroactively. (App. at C-1.13).

D. Statement of Related Proceedings

Hank Jr., along with others, is submitting a Petition for Writ of Certiorari for consideration by this Court with respect to a related proceeding in the Second Circuit. (For a brief statement explaining those proceedings, see App. J-6). The decisions of the Second Circuit and the Alabama Supreme Court are inextricably linked. As will be shown in the Second Circuit petition, the Alabama Supreme Court's decision in this case has tainted the Second Circuit's decision and the federal judicial system by causing the Second Circuit to disregard its own standards of review and engage in conduct outside of the usual course of judicial proceedings. The interrelated issues raised by both sets of opinions should be considered jointly by this Court.

VIII. REASONS FOR GRANTING THE WRIT

A. Retroactivity Issues

The central premise of the decision below was that *Trimble v. Gordon*, 430 U.S. 762 (1977),[8] should be applied retroactively to an estate that had been closed by final order for nearly ten years before commencement of the action. The Alabama Supreme Court found that the administrators of the estate had committed "legal fraud" by remaining silent about "material facts" regarding the Respondent. Because Alabama law in effect at all relevant

[8] *Trimble* held invalid an Illinois law that barred inheritance by an out-of-wedlock child from an intestate father unless the parents married.

times barred Respondent from inheriting, any such facts could have been material only if *Trimble* were applied retroactively.[9]

Upon upsetting the 1967 and 1968 judgments, the Alabama Supreme Court expressly declined to apply the Alabama law of intestacy as it existed in 1968. The reason was that "the law as it existed at that time has since been found to be unconstitutional by the United States Supreme Court in *Trimble v. Gordon*. . . ." (App. at A-1.51). Instead, the court applied laws enacted in 1982 and 1984 retroactively to Hank Sr.'s death in 1953 and to the 1967 and 1968 proceedings, even though the estate was closed, with judicial approval, in 1975.

Petitioner urges this Court to accept *certiorari* to clarify the controlling principles of retroactivity left unresolved by *Reed v. Campbell*, 476 U.S. 852 (1986).

1. Retroactivity in Civil Cases

Chevron Oil Company v. Huson, 404 U.S. 97 (1971), sets forth the general tests for determining retroactivity in a civil action. This Court has never determined whether, under *Chevron*, the rules of *Trimble*, *Lalli v. Lalli*, 439 U.S. 259 (1978),[10] and related cases should be applied retroactively.

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[9] The finding of fraud is legally insufficient, standing alone, to upset a final judgment. The alleged fraud must be the legal cause of injury to a party. The only relevance of the finding of fraud is if the allegedly withheld facts could have had some legal consequence. And the only way in which there could have been some legal consequence is if the governing law of intestacy at the time of the proceedings (1967-68) was unconstitutional. That, in turn, could only be the case if *Trimble v. Gordon* were applied retroactively.

[10] *Lalli* upheld a New York law forbidding out-of-wedlock children to inherit from their intestate fathers, even though there was convincing proof of paternity, unless there was a judicial finding of paternity during the father's lifetime.

Reed v. Campbell, 476 U.S. 852 (1986), with facts substantially identical to *Trimble* (*see* note 8, *supra*), was briefed and argued largely on the basis of *Chevron* retroactivity, but that issue was not resolved by the Court. *Reed* involved a direct appeal and an open estate. Therefore, important state interests associated with estates and inheritance were not threatened. Under the circumstances, the Texas law, which totally barred an out-of-wedlock child from inheriting from her intestate father in the absence of the marriage of her parents, was found invalid under *Trimble*.

Nevertheless, *Reed* recognized the important state "interest in orderly disposition of decedents' estates," the need for appropriate "limitations on the time and manner in which claims may be asserted," and the equally important interest in finality after distribution of assets of an estate, all of which would be undermined by wanton retroactivity. *Id.* at 865. In the open estate in *Reed*, however, those state interests were not implicated.

This case involves a closed estate, the assets of which have been distributed and have subsequently been transferred. It involves a collateral attack long after final orders established the respective rights of the parties. The case squarely poses the retroactivity question reserved in *Reed* and thus provides an appropriate and overdue opportunity for this Court to resolve the important issue that *Reed* left open.

a. The Law on Retroactivity in the Lower Courts Is Unclear

Chevron has not provided adequate guidance for the lower courts. Cases from numerous jurisdictions illustrate the importance of the issue and demonstrate the murkiness that prevails regarding retroactive application of *Trimble* and *Lalli* to closed estates. Those cases were definitively catalogued in the Jurisdictional Statement in *Reed* and influenced this Court to hear that case. The murkiness still prevails, as is reflected by the cases

briefed in the Appendix. (App. K-1). The bottom line is that the majority of jurisdictions do not accept the retroactivity approach of Alabama, but the confused state of the law cries out for this Court's articulation of a bright-line rule. *Compare Griffith v. Kentucky*, 479 U.S. 314 (1987) *with Teague v. Lane*, 109 S.Ct. 1060, *reh'g denied*, 109 S. Ct. 1771 (1989).

b. *Trimble* and *Lalli* Should Not Be Applied In a Collateral Attack

Every case decided by this Court involving the inheritance rights of an out-of-wedlock child has arisen on direct review and involved estates that had not been closed by final probate order. This case thus provides this Court with its first clear opportunity to address the retroactivity issue in a collateral attack and also to unify principles of retroactivity in the civil area. By analogy to the criminal cases, new constitutional rules, announced after an estate is closed, should not be applied to re-open the estate in a subsequent collateral attack.

Teague v. Lane, 109 S.Ct. 1060 (1989), held new rules generally not applicable to criminal cases on collateral review.[11] If the intervening decision was not dictated by precedent existing at the time the conviction became final, it is a "new" rule. *See Butler v. McKellar*, 58 U.S.L.W. 4294 (U.S. March 5, 1990) (No. 88-6677). *Trimble*, which cast doubt on the vitality of *Labine*, undoubtedly announced a "new rule" regarding the inheritance rights of illegitimates. 430 U.S. at 776, n. 17.

Teague's rationale applies to civil cases. *Teague* relied on cases upholding nonretroactivity in civil law. 109 S.Ct. at 1074. In comparing the civil and criminal contexts, *Teague* noted:

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[11] *Teague* was expressly adopted by a majority in *Penry v. Lynaugh*, 109 S.Ct. 2934 (1989).

> The fact that life and liberty are at stake in criminal prosecutions "shows only that 'conventional notions of finality' should not have as *much* place in criminal as in civil litigation, not that they should have *none*."

Id. (emphasis in original). *Reed* voiced the same concern for finality. Because finality of judgments has even more place in civil than in criminal litigation, especially in the field of estates and inheritance, *Teague* should be extended at least to this context.[12]

The three-pronged criminal law retroactivity test of *Linkletter v. Walker*, 381 U.S. 618 (1965), rejected as unworkable in *Teague*, closely parallels the three-pronged *Chevron* test of retroactivity for civil cases. *Chevron* has provided little guidance in illegitimacy inheritance cases. (App. K-1). Drawing a distinction between direct appeals and collateral attacks would avoid further confusion and inconsistency in the lower courts by providing a fair and workable bright-line rule.

This case is an appropriate one for applying such a test. Hank Jr.'s rights were determined by final judicial order in 1967. When the estate was closed in 1975, *Labine* (a 1971 case) was still the controlling precedent. Hank Jr. relied for years on the validity of the probate orders, as did subsequent transferees of the copyrights and renewal rights in Hank Sr.'s songs. If the decision below is allowed to stand, no distribution of assets pursuant to an order of probate is safe against a collateral attack based upon intervening changes in the law. Application of a *Teague*-type test would prevent uncertainty, and protect vested rights and final judgments, without substantial

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[12] *Cf. Bradley v. School Board*, 416 U.S. 696, 710-711 (1974) (recognizing distinction in civil retroactivity between a "change in the law that takes place while a case is on direct review . . . and its effect on a final judgment under collateral attack. . . . ").

hardship. *See Clark v. Jeter*, 486 U.S. 456 (1988) (invalidating six-year statute of limitations for action by out-of-wedlock child).

c. *Lalli* And Not *Trimble* Should Have Controlled the Result

One irony of this case is that, by applying *Trimble* rather than *Lalli*, the Alabama court chose the wrong precedent to apply retroactively. At all relevant times, Alabama recognized two alternative methods of legitimation, marriage or written declaration of paternity. In 1979, the statute was construed to permit a third method, adjudication of paternity during the father's lifetime.[13] As construed, the Alabama statute was identical to that of New York, which this Court upheld in *Lalli*. Had *Lalli* controlled, Respondent's claim would have failed.

The fine line that this Court has drawn in the area – between *Lalli* and *Trimble* – and the important state interests at stake make unwarranted the retroactive application of these cases to estates that have been administered and closed with court approval. This case presents an excellent vehicle for restoring clarity and finality to this important area of the law.

2. Retroactive Application of New Law Violated Due Process

The Texas court in *Reed* determined that the out-of-wedlock child was not entitled to share in her putative father's estate under the Texas Family Code, which had been enacted after the father's death. This Court observed that applying the Family Code to deny the child's pre-existing right to inherit would "raise serious due process questions." *Reed v. Campbell*, 476 U.S. at 856, n. 8. It is implicit in footnote 8 that inheritance rights cannot

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[13] *Everage v. Gibson*, 372 So. 2d 829 (Ala. 1979), *cert. denied*, 445 U.S. 931 (1980).

be denied based upon procedures or substantive criteria established after they can no longer effectively be utilized.[14] Due process requires a meaningful opportunity to assert one's rights, or contest those asserted by another, and that right is denied where a claimant is held to standards enacted after the time has passed when the claimant could no longer comply with those standards.[15]

While this case presents the reverse of the situation addressed in footnote 8 of *Reed*, the same due process concerns are implicated. Here, legislation enacted in 1982 and 1984 was applied to an estate closed in 1975. The lapse of time impeded Petitioner's ability to litigate paternity, which was legally irrelevant before the estate was closed but which became the central factual issue. This denied him due process just as the appellant in *Reed* would have been deprived of due process had Texas' new Family Code been applied retroactively to defeat her claim.

Retroactivity violates due process for yet another reason. "The retrospective aspects of legislation, as well as the prospective aspects, must meet the test of due process, and the justifications for the latter may not suffice for the former." *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 17 (1976). *See also Pension Benefit Guaranty Corp. v. Gray & Co.*, 467 U.S. 717, 729-30 (1984). There must be a nexus between the purpose sought by retroactivity and the conduct of the party to whose detriment the retroactive application works. *Connelly v. Pension Benefit Guaranty Corp.*, 475 U.S. 211, 229 (1986) (O'Connor and Powell, JJ., concurring).

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[14] For a discussion of this Court's subsequent recognition of the right to transfer wealth, *see Hodel v. Irving*, 481 U.S. 704 (1987).

[15] *Cf. Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982).

No rational purpose supports the retroactive application of new law in this case.[16] If the promise of *Turner Elkhorn Mining Co.* is not illusory, then this case provides a vehicle (suggested by footnote 8 in *Reed*) to establish the outer boundary of permissible or impermissible retroactivity.

B. Due Process Issues

1. Jurisdictional Issues

a. Due process requires that a person be afforded an opportunity to be heard before being bound by a judgment. "It is a violation of due process for a judgment to be binding on a litigant who was not a party or a privy" to a proceeding. *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 327 n.7 (1979).[17]

Hank Jr. repeatedly was declared by final court orders to be the sole heir of his father's estate, most recently by the order granting summary judgment in his favor in this proceeding. That decision, like all of the prior ones, was not appealed and became final under Alabama law.

The only matter before the Alabama Supreme Court was Respondent's appeal of the dismissal of her third party indemnification action against the former administrator of the estate, who had resigned in 1969, and her attorneys and sureties. Hank Jr. was not a party or a privy to the third party action or the appeal. The actions of the

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[16] The class of claimants, whose interest the decision protects, is limited to one, Respondent. *Compare Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922) *with Keystone Bituminous Coal Ass'n. v. DeBenedictis*, 480 U.S. 470 (1987).

[17] *See Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 329 (1971); *Hansberry v. Lee*, 311 U.S. 32, 40 (1940); *cf. Martin v. Wilks*, 109 S.Ct. 2180, *reh'g denied*, 110 S.Ct. 11 (1989).

Alabama Supreme Court in depriving Hank Jr. of property in an action to which he was not a party directly conflict with the applicable due process decisions of this Court.[18] Failure to adhere to the commonly understood constitutional preconditions for adjudication undermines respect for law. It stretches judicial authority beyond its lawful reach and challenges this Court's carefully considered constraints on the exercise of judicial power. This Court should hear this Petition to maintain discipline in the courts and to re-establish respect for the holdings of this Court.

b. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice . . . and . . . an opportunity to present . . . objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). In his Petition for Leave, Hank Jr. confronted the Alabama Supreme Court with the fact that he was not a party or privy to the appeal in which he was ordered to relinquish his vested rights. In response, the court asserted for the first time that Respondent's third-party action was *in rem*; Hank Jr.'s participation was deemed unnecessary. (App. at C-1.8 and C-1.13). *In rem* jurisdiction was viewed as a way to evade constitutional constraints on the exercise of personal jurisdiction.

This is precisely the type of end-run around due process that *Shaffer v. Heitner*, 433 U.S. 186 (1977), was designed to forestall. *Shaffer* held that due process rights "cannot depend on the classification of an action as *in rem* or *in personam*." *Id.* at 206. Justice Marshall noted that it was an unjustified "fiction" to assert that "jurisdiction over property is anything but an assertion of jurisdiction over the owner of the property." *Id.* at 212. Yet, it was precisely this "fiction" that provides the basis for the "*in rem*" analysis of the Alabama Supreme Court. If allowed

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[18] *See* note 17, *supra*, and accompanying text.

to stand, the skirting of *Shaffer* will undermine and promote disregard for *Shaffer*'s core principles.[19]

c. The decision below unsettles the law of estate administration. It is at odds with the long-prevailing doctrine that a decedent's domicile at death or a state's control over his or her affairs does not give that state jurisdiction to adjudicate the status of foreign situated property.

This Court has rejected the view that "the probate decree of the State where decedent was domiciled has an *in rem* effect on personalty outside the forum State that could render it conclusive on the interests of nonresidents over whom there was no personal jurisdiction." *Hanson v. Denckla*, 357 U.S. 235, 249 (1958). A state court has no authority to "enter a judgment purporting to extinguish the interest of [a person over whom it has no jurisdiction] in property over which the court has no jurisdiction." *Id.* at 250. Any such judgment is void. *Id.* at 249.

The principles announced in *Hanson* were not novel. *See Riley v. New York Trust Co.*, 315 U.S. 343, 353 (1942); *Baker v. Baker, Eccles & Co.*, 242 U.S. 394 (1917).[20] Insofar as a judgment affects assets located outside the forum state, it is *in personam*. Such an action can bind only parties to the action or their privies. 242 U.S. at 401. To hold a party bound by a judgment when he or she has not

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[19] *See also Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478 (1988) (requiring notice and reasonable opportunity to be heard before a claim against an estate can be abrogated); and *Mullane* (court without jurisdiction to render final, binding decree to settle questions about management of a common fund without adequate notice to and hearing for adversely affected parties).

[20] *Riley* and *Baker* both recognized that the *in rem* effect of judgments in probate proceedings does not extend to property located outside of the forum state. *Accord, Overby v. Gordon*, 177 U.S. 214 (1900).

had an opportunity to be heard is "contrary to the first principles of justice." *Id.* at 403.[21]

The Alabama court's purported reliance on "the *in rem* nature of the proceeding" is a transparent attempt to evade the fundamental requisite of due process of law – Hank Jr.'s right to be heard in an action in which vested rights were taken from him. The *in rem* theory also fails because no property of the estate was located in Alabama at the time of the Alabama court's ruling. The estate of Hank Sr. was closed in 1975, and all of its assets were distributed to Hank Jr. Since no estate assets exist, there is no "res" in Alabama or elsewhere.[22]

The Alabama Supreme Court's attempt to justify its divestiture of Hank Jr.'s exclusive rights by terming the action *in rem* runs afoul of longstanding decisions of this Court. Its judgment violates Hank Jr.'s due process rights, unsettles the law of estate administration and is worthy of review.

2. Substantive Due Process/Takings Issues

The Constitution protects rights in "property" under the due process and takings clauses. Prior adjudications of the same issues with the same parties over a period in excess of twenty years have created "property" rights. The failure below to recognize the constitutional significance of these vested rights unsettles adjudicated expectations and contradicts established doctrine. This issue is

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[21] Because the property at issue in *Baker* was not located in the forum state and that state lacked *in personam* jurisdiction over the person sought to be bound, the judgment was held not effective over the property.

[22] Further, under *Hanson* the state of domicile of the decedent does not, by that fact alone, have jurisdiction over specific assets within the estate (even if the estate were still open). Where, as here, the action involves the personal rights of one person and no estate assets can be found in the forum state, *in rem* jurisdiction over such assets and rights simply will not lie.

of critical importance to the every-day commercial life of this nation and surely warrants this Court's review.

a. Unappealed Final Judgments Confer "Property" Rights

The status of Respondent and Hank Jr. with respect to rights of inheritance from Hank Sr. was definitively decided in related judicial proceedings in 1967-68 and reaffirmed, twenty years later, in the trial court proceedings below. (App. H-6, I-5, B-1 and B-2). Since none of these prior judgments were appealed, they became "final." *Benenson v. United States*, 385 F.2d 26, 30 n. 7 (2d Cir. 1967).[23]

The unappealed final judgments – which established Hank Jr. as the sole heir of his father – conferred state-created expectations that, as significant "property" rights, are entitled to constitutional protection under the due process and takings clauses. *See McCullough v. Virginia*, 172 U.S. 102, 123-24 (1898); *Evans v. Chicago*, 689 F.2d 1286, 1296 (7th Cir. 1982).

A property interest should also be recognized in the expectation conferred by the common law rule of res judicata itself. The "doctrine of res judicata is not a mere matter of practice or procedure. . . . It is a rule of fundamental and substantive justice, of public policy and private peace . . . " that should be enforced in the name of finality and "recognized by those who are bound by it in every way. . . . " *Hart Steel Co. v. Railroad Supply Co.*, 244 U.S. 294, 299 (1917). Such fundamental principles create the kind of settled expectations that characterize property and warrant being accorded that status. As Professor Moore has stated:

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[23] Irrespective of the correctness or incorrectness of a final judgment, it settles the matters decided between the litigants. Rights established in such proceedings "must be recognized in every way." *Kessler v. Eldred*, 206 U.S. 285, 289 (1907).

> [D]ue process . . . should preclude a state from *subsequently* restricting or refusing effect to one of its judgments as res judicata beyond a certain point. The reasons . . . are: judicial rights were vested by the judgment; . . . just as a party may not arbitrarily be bound by a judgment, so he may not arbitrarily be deprived of his rights under a valid judgment. [emphasis in original] 1B J. MOORE, MOORE'S FEDERAL PRACTICE. ¶ 0.406[2] at 278 (2d ed. 1988).[24]

b. The Alabama Supreme Court Decision Constitutes A Taking of Petitioner's Property.

Once it is established that protected "property" interests are adversely affected by governmental action, the question becomes whether the government's action is unduly burdensome. *See generally Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978). The adverse effect on property interests can be caused by the action of a state court as well as by that of any other branch of government. *See Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673 (1930).

Hank Jr. has reasonable, investment-backed expectations derived from the earlier adjudications. *Cf. Ruckelshaus v. Monsanto Co.*, 467 U.S. 986 (1984). Based on those final determinations, Hank Jr. entered into binding agreements with other parties that will be adversely affected by the decision below. As the sole heir of Hank Sr., Hank Jr. has made a substantial investment in exploiting and protecting rights derived from his estate and has assumed obligations with respect to third parties relative thereto. To question the validity of the title to such rights licensed to third parties would have a far-reaching effect by disrupting the free flow of rights and property derived from any closed estate.

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[24] *See* note 14, *supra*.

If the interests in "property" are established and investment-backed, the question becomes whether the governmental action strikes an appropriate balance between the competing public and private interests. The Fifth Amendment is "designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 163 (1980). Reasonable burdens may be placed on property in the public interest, but government may not single out and impose special burdens on designated property owners, thereby depriving them of the beneficial use of their property, when those burdens of payment should be spread on all citizens.

The undoing of the settled expectations created by prior judicially-conferred property rights over a period of twenty years places at risk commercial practices that rely on the ability of commercial trading partners, under court approval, to convey good title to "property." This potentially significant impact warrants this Court's attention.

c. The General Principle That A Judgment Will Not Be Altered on Appeal in Favor of a Party Who Did Not Appeal is of Constitutional Dimension.

Had it occurred in the federal courts, the decision below would be surely and swiftly overturned. In *Federated Department Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981), this Court held that "[a] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." This Court was very explicit that the "res judicata consequences of a final, unappealed judgment on the merits" are unaltered "by the fact that the judgment may have been wrong or rested on a legal principle subsequently overruled in another case." *Id.*

Similarly, in *United States v. Stanley*, 483 U.S. 669 (1987), the district court had dismissed a cause of action

and no appeal was taken from that order. Justice Scalia concluded that the Court of Appeals had no jurisdiction to enter judgment involving the non-appealed order. In a statement that would equally apply to the decision below, Justice Scalia remarked that "[t]he Court of Appeals' action is particularly astonishing in light of the fact that the United States was not even a party to the appeal, which involved only . . . the individual . . . defendants." *Id.*

Hank Jr. was not a party to the appeal to the Alabama Supreme Court. It involved only the third party defendants. Respondent has already lost on the question of her ability to inherit from Hank Sr. in at least three proceedings. Thus, in federal court, *Stanley* and *Moitie* would demand a reversal of the action below. The important question is whether *Stanley* and *Moitie* reflect purely federal supervisory decisions or whether they have constitutional underpinnings.

That the principles of finality and res judicata so forcefully expressed in *Stanley* and *Moitie* have constitutional status can be readily inferred from this Court's decisions in *Moitie* and *Marrese v. American Ass'n of Orthopaedic Surgeons*, 470 U.S. 373 (1985). In *Moitie*, Chief Justice Rehnquist noted that res judicata "serves vital public interests . . . . " and is more than "a matter of practice or procedure inherited from a more technical time . . . ." 452 U.S. at 401. As in this case, parties that do not appeal make a "calculated choice to forgo their appeals." *Id.* at 400-401. Denial of the claim is appropriate because "res judicata . . . is a rule of fundamental and substantial justice . . . . " *Id.* at 401.

Moitie suggests a constitutional status for the doctrine of res judicata as a "liberty" or "property" interest under the Fourteenth Amendment which is supported by this Court's subsequent decision in *Marrese*. While recognizing that states have wide discretion in determining the "preclusive effect of judgments in their own courts," this

Court carefully made the scope of such discretion "subject to the requirements of . . . the Due Process Clause." 470 U.S. at 380. *Marrese* reinforces the view that the principles of finality and res judicata embodied in *Stanley* and *Moitie* have constitutional roots – that due process constrains state judicial decisionmaking discretion. *Accord* 1B J. MOORE, MOORE'S FEDERAL PRACTICE, ¶ 0.406[2] at 278 (2d ed. 1988).

This action provides an excellent vehicle for addressing these issues – for determining explicitly, without the need for initial fine-tuning or line-drawing, whether there is a constitutional dimension to the time-honored doctrines of finality and res judicata.

3. Procedural Due Process Issues

The Alabama Supreme Court purported to adjudicate long-vested property rights of Hank Jr. in its decision on Respondent's appeal of a third party action to which Hank Jr. was not a party. Due process requires, at a minimum, that any final adjudication of such deprivation be preceded by notice and an opportunity for a hearing appropriate to the nature of the case. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

When protected property interests are implicated, the right to some kind of hearing is paramount. *Board of Regents v. Roth*, 408 U.S. 564 (1972). No party in the third party action briefed any issue that implicated Hank Jr.'s property rights. (App. at G-2, G-3, G-4, G-5 and G-6). Respondent acknowledged that she did not appeal the adverse decision in favor of Hank Jr. (App. G-6.11), who received no notice of any kind that his rights were being adjudicated in the third party action appeal.[25]

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[25] *Cf. Martin v. Wilks*, 109 S.Ct. 2180, 2185-2186, *reh'g denied*, 110 S.Ct. 11 (1989). (Knowledge of proceedings without joinder therein is insufficient to constitute notice or opportunity to be heard in order to bind a party by a judgment or decree).

The first "notice" that Hank Jr.'s rights were being affected was the July 5, 1989, decision of the Alabama Supreme Court. Hank Jr. promptly sought to be heard by petitioning for leave to appear. The court denied him that most fundamental due process right.

Providing an opportunity to be heard requires that a reasonable forum be provided. *See Fuentes v. Shevin*, 407 U.S. 67 (1972). By denying the Petition for Leave, the Alabama Supreme Court effectively denied Hank Jr. a forum in which to redress his grievances prior to the final deprivation of his property interests. That court definitively decided all issues related both to the status of Respondent as an heir of Hank Sr.'s estate and to the stripping of Hank Jr. of his vested rights in the estate. All of this was accomplished without furnishing Hank Jr. any forum in which to defend his constitutionally protected interests.

Under this Court's decisions in cases such as *Mullane* and *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478 (1988), the failure to provide notice and opportunity to be heard violated due process.

IX. CONCLUSION

Petitioner Randall Hank Williams, Jr. has been deprived of long-vested property and property rights by the Supreme Court of Alabama in an action to which he was not a party or a privy. It has done so in violation of his rights under the Constitution of the United States. The Alabama Supreme Court has impermissibly retroactively applied judicial decisions and statutory enactments to an estate, which has been closed with judicial approval for over ten years, in order to deprive Petitioner of his property. It has done so without providing Petitioner any notice or opportunity or forum in which to be heard. It has ignored the fundamental, time-honored principles of finality and repose. The actions of the Alabama Supreme Court are unprecedented and its violation of Petitioner's

constitutional rights directly conflict with applicable decisions of this Court. For these reasons, Petitioner respectfully requests that this Petition be granted.

Respectfully submitted,

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APPENDIX A-1

THE STATE OF ALABAMA – JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1988-89

Catherine Yvonne Stone

87-269

v.

Gulf American Fire and Casualty Co., et al.

Appeal from Montgomery Circuit Court

(CV-85-1316-K)

(Released July 5, 1989)

MADDOX, JUSTICE.

This appeal involves the estate of the late Hiriam "Hank" Williams and concerns the rights of Catherine Yvonne Stone, an illegitimate child who, in 1985, was declared by the trial court in this proceeding to be the natural child of Hank Williams, and the major questions presented are whether two final judgments entered in 1967 and 1968, which determined that Stone had no rights to share in the estate, can be reopened because of an alleged "legal fraud."

Stone appeals from a summary judgment against her third-party complaint, in which she asked that the two former judgments be set aside, which judgments had been entered in favor of third-party defendants Irene Smith; Jones, Murray and Stewart, P.C.; Gulf American Fire and Casualty Company; American States Insurance

Company (as successor in interest of Gulf American); and several fictitiously named parties.[1]

This case began as an action for declaratory judgment filed by Randall Hank Williams (hereinafter "Williams, Jr."), along with Roy Acuff and Wesley Rose, the trustees in liquidation of Fred Rose Music, Inc., and of Milene Music, Inc., seeking a declaration that Stone was barred from establishing that she is the natural child of Hank Williams and from asserting any claim or entitlement to his estate or to any interest or royalties flowing therefrom.[2] Stone filed a counterclaim on these issues, and, in

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[1] Irene Smith and Robert Stewart were the administratrix and administrator of the Williams estate, and Gulf American wrote the bond. The estate of Robert B. Stewart was dismissed as a third-party defendant by Stone on March 25, 1987.

[2] In their complaint for declaratory judgment, they asked for the following relief:

> "2. That this Court enforce and uphold in every respect the prior Orders and Judgments of this Court in Civil Action Nos. 25,056 and 27,960, declare them valid and binding upon the parties hereto, and enjoin Catherine Yvonne Stone from making further claims and demands relative to the estate of Hiriam "Hank" Williams or the aforesaid copyright interests or renewals thereof.
>
> "3. That in the event this Court alters, modifies or otherwise changes the prior Orders and Judgments in Action Nos. 25,056 and 27,960 that this Court proceed to adjudicate and determine the rights of the parties hereto with regard to the Estate of Hiriam Hank Williams and the copyright and renewal copyright interests of the musical compositions of Hiriam 'Hank' Williams.

(Continued on following page)

addition, the third-party complaint that now constitutes the basis of this appeal.

In her third-party complaint, Stone alleged an intentional, willful, fraudulent, and conspiratorial concealment from the court of her identity and potential claim to the estate of Hank Williams.[3] She requested that the estate be reopened and that she receive her proportionate share of the estate,[4] that she be awarded punitive damages, and that the sureties for the estate, Gulf American and American States, compensate her for damages not recovered against the other third-party defendants or real parties in interest.

(Continued from previous page)

"4. That this Court will grant to the Plaintiffs such other, further and different appropriate relief to which they may be entitled."

[3] In her first claim for relief in her third-party complaint Stone named Smith, Stewart, and several fictitiously named real parties in interest and alleged, inter alia, that "[f]rom in or about 1953 through sometime in 1967, Smith, Stewart and [Jones, Murray and Stewart], through Stewart, and real parties in interest C, D, E, F, G, H, I, J, K, M, and N, intentionally, willfully and fraudulently concealed Stone's identity, existence, claim, and rights as [a] natural child of Hank Williams, Sr. from the Montgomery County Circuit Court in contravention of their respective fiduciary obligations to Stone and in contravention of their respective obligations to the court."

[4] Stone's first claim for relief requested the following:

"1. That the estate of Williams, Sr. be reopened and all orders purportedly governing Stone's rights in that estate be declared null and void.

"2. That Stone be entitled to share her proportionate interest in all property and income of the estate."

In the proceedings below, the trial court entered summary judgment in favor of Williams, Jr., Acuff, and Rose on all issues contained in their original complaint and in Stone's counterclaim, with the exception of the issue of Stone's paternity, which it reserved for trial, and the trial court entered summary judgment in favor of all third-party defendants, including those fictitiously named, on Stone's third-party complaint, in which she asked, among other things, that the estate be reopened because of legal fraud. After a trial on the issue of paternity, the court found that Catherine Yvonne Stone is the natural child of Hank Williams. No appeal was taken from this judgment of paternity, and this finding is undisputed on appeal.[5]

Statement of the Facts

An understanding of the unique facts underlying this action is requisite to an understanding of this case, and it is because of these unique facts that we fashion the relief we do in this case. The trial judge entered a lengthy order in which he detailed the facts. We could include those findings, which we find to be supported by the record, in this opinion, but we think that a summary of those facts will be sufficient.

On October 15, 1952, Hank Williams entered into an agreement with Bobbie W. Jett relative to the custody and support of an unborn child carried by Jett. The agreement was prepared by and executed in the presence of Robert

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[5] Stone did not appeal the adverse ruling on her counterclaim either. We will discuss that issue in this opinion under the section "Relief Granted" *infra*.

B. Stewart, an attorney in the general practice of law in Montgomery, Alabama, who was one of the third-party defendants. The agreement provided, in part, as follows:

> "This agreement made this 15th day of October, 1952, by and between Hank Williams of Montgomery, Alabama, and Bobbie W. Jett of Nashville, Tennessee,
>
> "WITNESSETH
>
> "WHEREAS, the said Bobbie W. Jett is at the present time pregnant and expects to be delivered of a child on or about the 1st day of January, 1953, and the said Hank Williams may be the father of said child, and,
>
> "WHEREAS, it is the mutual desire of both parties to provide for the necessary expenses of the said Bobbie W. Jett and of the child to be born,
>
> "IT IS NOW, THEREFORE, mutually agreed by and between the said Bobbie W. Jett and the said Hank Williams as follows:
>
> " . . . That the said Hank Williams will provide room and board for the said Bobbie W. Jett in Montgomery, Alabama, from October 15th until the date said child is born . . . .
>
> " . . . That said Hank Williams shall pay all doctors and hospital bills in connection with the confinement of the mother and birth of the child . . . .
>
> " . . . Within 30 days after the birth of said child, the said Hank Williams shall provide a one-way plane ticket to the said Bobbie W. Jett from Montgomery to another place in California which she may designate . . . .

" . . . After the birth of said child, both parties agree that it shall be placed with Mrs. W. W. Stone of Montgomery [Hank Williams's mother], and that she shall have full custody and control of said child for a period of two years after its birth and that during said time the said Hank Williams will provide and pay for a nurse and will pay all necessary expenses for clothing, food, medical care, and other attention which is required by the child during said two year period. During said two year period that the child is in custody of Mrs. Stone, both the *father*, Hank Williams, and the said Bobbie W. Jett shall have the right to visit said child at convenient and reasonable hours. *Beginning at the third birthday of said child, its custody and control shall vest in the said Hank Williams and the child shall live with him continuously and be wholly and completely supported . . . by him, and cared for by him until it reaches its fifth birthday at which time the custody of the child shall be divided between both parties, that is, during the winter months or school months the child shall remain with Hank Williams and during the summer months or school vacation months the custody shall be in the mother. The responsibility for the support of said child shall be in Hank Williams both during the times when he has custody of the child and when it is visiting with the mother.* During the time that the child is in the custody of the *father*, Hank Williams, the mother shall have the right to visit it at reasonable times, and at reasonable hours, and during the time it is in the custody of the mother during the summer months the *father* shall have the same privilege of visitation.

> " . . . In view of the fact that the paternity of said child is in doubt and is not to be in any way construed as admitted by the agreement which is made solely because of the possibility of paternity, the said Bobbie W. Jett does hereby release the said Hank Williams from any and all further claims arising out of her condition or the birth of said child.
>
> "IN WITNESS WHEREOF, the parties have hereunto set their hands and on the day and date first above written.
>
> "/s/ _____
> "Bobbie W. Jett
>
> "/s/ _____
> "Hank Williams"

(Emphasis added).

On January 1, 1953, Hank Williams died intestate. Five days later, Bobbie Jett gave birth to a baby girl; she named the child Antha Bell Jett. By agreement, the child was left with Hank Williams's mother, Mrs. Lillian Williams Stone, and Jett left the state. Mrs. Stone immediately instituted adoption proceedings, and a final decree of adoption was entered on December 23, 1954. The child's name was changed to Catherine Yvonne Stone.

Shortly thereafter, on February 26, 1955, Lillian Stone died. Other family members were either unable or unwilling to care for the child, and, thus, at the age of two, she became a ward of the State. The child remained in foster homes until she was eventually adopted on April 23, 1959, at the age of six, by a Mobile couple, George and

Mary Deupree. Her name was then changed to Cathy Louise Deupree.

In that year, an action was brought on behalf of Williams, Jr., to obtain court approval of a contract between Fred Rose Music, Inc., and Williams, Jr., concerning his interest in the copyright renewals of his father. The matter of the Stone child was not raised in that proceeding, even though the record now before us shows that the parties to that contract knew of the agreement executed by Williams, Sr., and also that the State of Alabama, by and through its Department of Pensions and Security, knew of her parentage. Then, in 1967, Audrey Williams,[6] the mother of Williams, Jr., filed a petition in Montgomery Circuit Court for final settlement of the estate. She also instituted related proceedings in 1968, concerning the guardianship estate of Williams, Jr. At the time of the 1967 and 1968 proceedings, Irene Smith, the sister of Hank Williams, was the administratrix of the estate. It was in Smith's answer to Audrey Williams's petition that the court was advised, apparently for the first time, of the existence of the agreement and of the potential claim of the Stone child. In both the 1967 and the 1968 proceedings, the court appointed Drayton Hamilton, a Montgomery attorney, to serve as the child's guardian ad litem. Hamilton had previously served as her guardian ad litem in 1963 in proceedings relating to the estate of Lillian Stone; however, the record shows that in 1963, Hamilton knew only that Stone was an adopted child of Lillian Stone *and was not aware of her natural parentage.*

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[6] Audrey Williams and Hank Williams divorced in 1952.

During 1967 and 1968, Stone lived in Mobile with her adoptive parents. Hamilton notified the Deuprees of the proceedings, but they refused to participate in any matters involving the child's natural father. Despite the Deuprees' adverse position, Hamilton continued to represent the child and actively attempted to establish her rights. Even so, on December 1, 1967, Judge Richard P. Emmet, of the Montgomery County Circuit Court, issued an order stating that Stone had no right to inherit from the estate of Hank Williams. In a second order issued on January 30, 1968, in the related guardianship estate case of Williams, Jr., Judge Emmet again reiterated that Stone had no right to inherit from the estate. In neither proceeding did the court address the issue of Stone's paternity. After the court's adverse ruling, the guardian ad litem sought permission to appeal on behalf of the Stone child; however, the court denied him permission, and he did nothing further on the child's behalf.[7]

Despite the court's rulings in the 1967 and 1968 proceedings, once Stewart became the administrator of the estate in 1969, he began setting aside money for Stone in the event that she ever claimed an interest in the estate. However, the estate was closed in August 1975, without further incident.

The record shows that it was not until 1974, when Stone was 21 years of age and attending the University of Alabama, that the truth of her paternity was ever suggested to her. During that year, she was informed that the

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[7] For a more detailed discussion of why the guardian ad litem did not appeal, see *infra* at pp. 24-26.

Montgomery Circuit Court was holding certain funds for her from the *estate of Lillian Stone*. She was not informed that Stewart had been setting aside money for her. All the court records pertaining to the 1967 and 1968 proceedings were sealed. Stone traveled to Montgomery and received the proceeds of the *Lillian Stone estate*, and it appears that it was at that time that she began to seriously seek information concerning her natural parentage.

On October 17, 1979, Stone arranged a meeting with Emogene Austin of the Alabama Department of Pensions and Security for the purpose of verifying her paternity. The record shows that at that time she apparently did not know the name of her natural mother but suspected that Hank Williams was her natural father. Ms. Austin revealed the agency's information to her concerning her background, including information indicating that her natural father was Hank Williams; that information shows that the State of Alabama knew of her background from almost the beginning. However, throughout this time, all of the records concerning her paternity remained sealed by the Montgomery Circuit Court, and she had no knowledge of the existence of the custody and support agreement or of the fact that Stewart had been setting aside her share of the estate, even after the 1967 and 1968 decrees were entered.

Stone continued to search for and retrieve documents and other information bearing on this subject through the early part of 1985. On July 1, 1985, she filed an action in Montgomery Circuit Court requesting that documents relating to her paternity, formerly placed under seal by the Montgomery Circuit Court, be released to her. On August 5, 1985, Stone sent a demand letter to Williams,

Jr., Acuff, and Rose, advising them of her claim in the estate and asking to share in the copyright renewals of her father, Hank Williams. Subsequently, on September 10, 1985, Williams, Jr., Acuff, and Rose filed the action for declaratory judgment that eventually led to this appeal.

Issues

The primary issues presented by this appeal are:

I.) whether the former judgments rendered in the 1967 and 1968 proceedings involving Stone's right to share in the estate of Hank Williams can be reopened by reason of legal fraud on the court; and, if so,

II.) whether Stone's claim to set aside the former judgments is barred by the equitable doctrine of laches; and, if not, then

III.) to what relief, if any, is Stone entitled?

In determining the primary issues, we also address the following questions:

a) whether the administrator or the attorney for the estate, having independent knowledge of Stone's claims to the estate, had a duty to notify the court of these facts;

b) whether the trial court's failure, in the 1967 and 1968 proceedings, to grant the guardian ad litem permission to appeal the adverse ruling on behalf of Stone constitutes an error of law sufficient to warrant modification of the judgment;

c) whether an illegitimate child is entitled to inherit from her natural father;

d) whether the doctrines of res judicata and collateral estoppel are applicable to the issues involved in this case; and finally,

e) whether Stone's adoption, two years after the death of her natural father, precludes her from establishing her paternity for the purpose of intestate succession.

Fraud

We now address the first issue, concerning legal fraud. Stone argues that the trial court erred in entering a summary judgment for the third-party defendants in this case because, she says, the evidence shows that they fraudulently conspired to keep certain facts relating to her existence, identity, and potential claim to the estate of Hank Williams concealed from the court. We agree.

The record contains substantial evidence from which a factfinder could conclude that third-party defendants Robert Stewart and administratrix Irene Smith and others withheld from the court before and during the 1967 and 1968 proceedings material facts concerning the issue of Stone's paternity. The evidence that follows indicates the series of events that transpired both prior to and following the death of Hank Williams that directly affected the fate of the child for whom Williams had unequivocally accepted responsibility by executing an agreement which contains some equivocation, but in which he referred to himself three times as the "father." These events ultimately resulted in the foreclosure of any contract right that the child might otherwise have had under the 1952 custody and support agreement, as well as the adverse judgments concerning her right to inherit, which are now the subject of this appeal.

The record shows that on October 15, 1952, Hank Williams accompanied Bobbie Jett to the law offices of his

attorney, Robert Stewart, to discuss a legal arrangement concerning an unborn child being carried by Jett. Mrs. Lillian Stone, Hank Williams's mother, was also present. At this meeting, Stewart prepared the custody and support agreement involved in the present lawsuit. According to Stewart's testimony in the 1967 proceedings, he represented only Hank Williams at the time the agreement was executed and at no time was Bobbie Jett or the unborn child represented by counsel.

After Hank Williams's death in January 1953, it was Stewart who prepared the letters of administration that were issued to Williams's mother, Lillian Stone, as administratrix. Although Stewart knew of the child's existence, identity, and potential claim to the estate, because he had drafted the custody and support agreement only three months earlier, the letters of administration contained only the names of the following persons as heirs and distributees of the estate:

> "Billie Jean Jones 'who states she is the widow,'
>
> "Randall Hank Williams, Jr.,
>
> "Mrs. Irene Williams Smith, a sister,
>
> "Elonzo H. Williams, father, and
>
> "Lillian S. Stone, mother."

It is interesting to note that the list did include Billie Jean Jones, "who states she is the widow" of the deceased; yet, *it did not include Stone.*

Over the course of 22 years following the death of Hank Williams, Stewart remained actively involved in the affairs of the Williams family. Throughout the years 1953 to 1975, Stewart served as the attorney for the estate, and

from 1969 through 1975 he also served as the administrator of the estate.

In 1953, Stewart even acted as Lillian Stone's attorney in her action to adopt the child. The record shows that at all times, Mrs. Stone held the child out to Stewart and to the world as the daughter of her deceased son, Hank Williams. This is evidenced by the following notes taken during an investigation conducted by the Montgomery County Department of Public Welfare, prior to Mrs. Stone's adoption of the child:

"1/28/53

> "Mrs. Stone discussed her situation with ease throughout the entire interview, but cried during the time that she was talking. She said that she was in the office in regard to a child which was born on January 6, 1953. She explained that the child is the daughter of Bobbie Webb Jett *and that the father of the child is her son, Hank Williams, deceased.* She brought with her a letter stating to whom it may concern and signed by Mr. Williams. It said that he would be responsible for the delivery of this child at the hospital where the mother desired. . . . She mentioned that she took care of Miss Jett throughout the pregnancy . . . [and] that her son took care of all the expenses during this time.
>
> " . . . She stated that Miss Jett had left the child at her home during the time that she was making a visit to Butler County, her home, and that she does not know what Miss Jett plans to do. She stated that she does not wish to keep the child unless she can adopt her and that she would be tremendously interested in doing so. *While crying, she stated that she knew that this is what her son would want her to do, and he once commented that he did not feel that Miss Jett was a*

suitable person to take care of the child. Mrs. Stone seemed quite devoted to the child and it was apparent that she was very desirous to keep this child as it appeared that she would feel closer to her son. She went on to say that Miss Jett lives in Nashville and that all their papers are with [Mrs. Stone's] lawyer, Mr. Robert B. Stewart. . . .

"* * * *

"During this interview, Mrs. Stone commented that she had a heart ailment and worker gathered that it must be somewhat serious. She said that Mr. Stewar[t] was not in accord with their adopting the child because of this heart condition and I went into a discussion with her asking her whether or not she was able to take care of the child and what plan would be made for its future in the event that this baby was left parentless. She stated that her daughter, Mrs. Irene Smith of Portsmouth, Va. would be glad to take the child and I wondered if she would be interested in taking her at this time. Mrs. Stone would not want her to take the child as she would like to have the baby herself." (Emphasis added.)

The adoption became final on December 23, 1954, following which Stewart continued to remain closely associated with the Williams family, and, in particular, with Irene Smith, Hank Williams's sister. The following letter, dated April 6, 1953, when the child was three months old, evidences the relationship of Smith and Stewart with regard to the estate of Hank Williams and the Stone child:

"Dear Mr. Stewart:

"* * * *

"The idea you have about making Billy [Hank Williams's reputed widow] a legal wife isn't bad at all but I fear that once you accept

her as one she will try every trick in the book. I keep thinking about the time when it will be necessary to renew copyrights on Hank's songs, as his legal wife she will be the one to do that unless of course that is one of the rights she gives up. Somehow I just can't picture her giving anything up.

"* * * *

"Thanks for sending the royalties check. It sure came in handy . . . . I want to thank you again for looking out for me. You know if mother adopts that child there will be a new will. Tee [Smith's husband] says that if she adopts it and then can't take care of it, he is not going to let me take it. Keep this under your hat, mabey [sic] it will never be necessary for me to have the child at all. I feel that the poor child would have a lot better chance in this life if it were adopted by someone that would never know of its origin at all. It won't be three years before someone will start telling it that it isn't exactly like other children. Oh, well I guess I sound like I just don't want mother to change her will but really that isn't it at all. I don't want a thing that we don't work for ourselves and whether or not I get that house or not doesn't bother me in the least. I am only thinking about that child. It may be the one thing that will help mother live to be a hundred[;] lets hope so. She seems to love it very much and will perhaps give it a wonderful chance."

Lillian Stone died on February 26, 1955. At that time, Smith became the administratrix of Hank Williams's estate and remained administratrix throughout the 1967 and 1968 litigation, until she relinquished her duties to Stewart in 1969. Also, after Lillian Stone's death, Smith and Stewart became directly involved in the decision-

making process concerning the fate of the child. The record shows that after Smith refused to fulfill her previous commitment to care for the child in the event that it ever became necessary, she initiated procedures to make the child *a ward of the State*. She was successful in her efforts, in part, because Mr. Stone, Lillian Stone's spouse, was unable to care for the child alone. The records of the Montgomery Department of Public Welfare reflect these events, as follows:

> "3/10/55
>
> "Mr. Bob Stewart, lawyer for Mrs. Stone, [deceased], called Miss Rainer on this date and stated that Mrs. Stone's daughter, Irene Smith, would like to come to the office to discuss what would be best for Kathy Stone, the adopted daughter of Mrs. Stone . . . .
>
> "Later: Mr. and Mrs. Smith in office by appointment. Mrs. Smith stated that she felt that it would be for the best interest of Kathy if the child was placed for adoption and was no longer associated with Hank Williams' family. She explained that she and her husband were devoted to the child and would be perfectly willing to keep the child but feels that there would always be publicity and gossip connected with this baby. Mrs. Smith states that she knows she agreed to take Kathy in the event anything happened to her mother and that she is still willing to take the child but feels strongly that the child would always be subjected to ugly gossip and vicious rumors and would possibly be hurt very deeply in later years by this talk.
>
> "Mr. and Mrs. Smith are at present living in Dallas, Texas, where Mr. Smith is in the Navy but Montgomery is their home and they plan to come back [here] in five (5) years when Mr.

Smith can retire. They also plan to return to Montgomery each year for the Hank Williams Memorial and Mrs. Smith stated that she could just hear the tongues wagging now when Kathy would ride down the street in an automobile as part of the parade to commemorate Hank. For these reasons Mrs. Smith feels that Kathy could lead a much more normal life if she was placed for adoption with another family. Mrs. Smith seems to be very sincere and earnest in her opions [sic] about Kathy's future, and reiterated that she was not trying to get out of raising this child. She does not want this department to think that she is shirking her duty or ashamed to take the child and kept asking if we did not agree that she was right in her way of thinking. Both Mr. and Mrs. Smith stated that if Montgomery were not their home and they did not plan to reside here permanently at the end of Mr. Smith's tour of duty with the Navy, that they would not hesitate to take Kathy and raise her as their own child. They feel that so many people know about the child however that whereever [sic] they might live, rumor and gossip would catch up with them and Kathy would always be affected by unfavorable publicity.

"We explained to Mr. and Mrs. Smith that as the adoption had been granted final, Mr. Stone was the legal parent . . . and we wondered how Mr. Stone felt about placing the child for adoption. Both Mr. and Mrs. Smith stated that Mr. Stone was a very emotional person and he would like for the Smiths to take Kathy and rear her. They have not talked to him as yet about what would be best for Kathy but they feel that they would have a hard time making Mr. Stone see their point of view. . . .

"At the present time, Kathy is staying part time with the Smiths and part time with Marie Glenn . . . . Mrs. Smith stated that Kathy was

much happier with Marie than she was with the Smiths as she cried continuously while they had her. Mrs. Smith stated that Kathy was a very nervous child and seemed to miss Mrs. Stone a great deal. Mrs. Smith wondered if it was all right for Kathy to remain with Marie until other plans could be worked out. Worker told Mrs. Smith that we felt wherever the child was happiest would be all right until permanent plans could be made.

" . . . Mrs. Smith stated that she was very anxious to have the placement of the child settled as she had already received numerous telephone calls asking what would become of the child. She states that she did not realize so many people knew about this child but she has had telephone calls from Ohio and other various states regarding Kathy and who Kathy would live with now. Mrs. Smith seems to feel there will be a great deal of publicity regarding Kathy's placement. Mrs. Smith was assured that all of our dealings would be strictly confidential and it would be handled as quietly as possible. . . .

"3/11/55

"Mr. and Mrs. Smith and Mr. Stone in office late in the afternoon. Mr. Stone apologized that he was in his work clothes and said that he came straight from work. Mrs. Smith stated that she had told Mr. Stone their feelings regarding their not taking Kathy and he seemed to understand. Mr. Stone stated that he could not possibly take care of Kathy and he guessed it would be best for her to be placed for adoption. Mr. Stone was quite emotional and cried but after a lengthy discussion stated again that he could see nothing else to do but have the child placed for adoption. He seemed sincere in his decision and signed a Boarding Home Agreement with

this Department. We explained to Mr. Stone that we would make an appointment with him to go to the Juvenile Court to sign a Petition and would place Kathy in a boarding home until permanent plans could be made for the State to assume her custody.

"3/15/55

"Worker met Mr. Stone at the Juvenile Court after an appointment had been made. Mr. Stone told Mrs. Dees that he felt this was the best plan for Kathy although it hurt him very deeply to give her up. Mr. Stone was very emotional and cried during the interview . . . .

"3/17/55

"Mrs. Smith in office by appointment as we explained that we would like as much background information on the alleged father of Kathy as possible as it would help in finding the most suitable home for the child. Mrs. Smith seemed to thoroughly understand and was quite willing to give any information and cooperate in every way. Mrs. Smith told us that Hank Williams was six feet, two inches (6' 2") tall, had a rather dark complexion which she would classify as almost olive. She said that she has the same skin which worker would say was almost olive. Mr. Williams was a brunette with brown eyes. He attended school through the tenth grade but did not like school too well. She added that he was very capable and made excellent grades in the things that he liked. He started singing at the age of five (5) and started playing the guitar at age seven (7). Mrs. Smith stated that she would consider her brother a musician, poet, composer, and philosopher."

On April 22, 1955, less than two months after Lillian Stone's death, Stone was made a ward of the State.

The record shows that Stewart acted as the attorney for the estate as early as 1953 and that Smith became the administratrix in 1955, but neither apprised the court of the evidence of the child, despite their intimate knowledge of her claims as a potential heir to the estate and as a possible creditor under the terms of the agreement to provide support. The following letter, dated February 28, 1962, written to Stewart by attorney Harold Orenstein, legal counsel for Wesley Rose, shows Stewart's knowledge of Stone's potential right to share in her father's copyright renewals:

> " . . . From the documents which you have furnished to me, Catherine Yvonne Stone (born Antha Belle Jett) was returned to the State of Alabama Welfare department after the death of Lillian Stone, and then re-adopted by persons unknown. *Nowhere in the documents is there an indication of the names of the natural parents of Catherine Yvonne Stone. We assume that these documents were the ones that you mentioned had been sealed and could never be re-opened.* However, we note that the child was given a certain sum of money for its 'homestead' rights in the property of Lillian Stone. . . . *It would seem that some token payment to the State of Alabama Welfare Department again on behalf of this child may or may not be indicated (depending upon your viewing of the Alabama law). There is no way of evaluating now what a share of the renewal copyrights would be worth and no one could predict their valuation. We feel that a nominal payment might forever cut off the right of this child to the renewals.* We should like to have further comment from you regarding the foregoing.
>
> " . . . I shall confer with Wesley [Rose] after he has received [a] copy of this letter and, after having heard from you regarding Catherine

Yvonne Stone, proceed to draw up an agreement which we can present both to the courts and to Audrey Williams." (Emphasis added.)

In a second letter, dated July 5, 1962, Stewart responded:

"None of this would seem to affect the child's statutory right to copyright renewal. . . .

" . . . Since the statutory right of the child comes to it through its father, and since the federal courts have held this right belongs to an illegitimate, *we may be faced with a difficult problem, and certainly one we would not want to litigate.*

"As possible alternatives we can:

"a. Consider that by the adoption all rights under the renewal statutes have been lost.

"b. Try to explain the matter to our Welfare Department, which does not want the child ever to know its background, *but which would probably feel a duty to protect any right the child might have, and hope for a cooperative settlement and court approval.*

"c. Petition the court for approval of an agreement between Acuff-Rose and the Guardian, requesting that a guardian ad litem be appointed for Randall and another for all other possible minors who might claim a similar renewal right. *If we use this procedure, the guardian ad litem will have to be told what we are talking about, and might be vigorous in asserting this right. Much would depend on the person appointed, over which we have no control.*

"I do not believe we can make a token payment to the Welfare Department since any payment which would bar a later claim would have to be made with an understanding of the facts by the court. My

> alternatives are not much better, but perhaps you can improve on them with a little thought." (Emphasis added.)

No proceedings concerning the estate of Hank Williams were ever instituted on behalf of the Stone child. However, as stated earlier, in 1967, when Audrey Williams petitioned the court for final settlement of the estate on behalf of Williams, Jr., Smith, as administratrix, finally advised the court that there might possibly be an illegitimate child of the deceased somewhere, and the court then appointed Drayton Hamilton to serve as the child's guardian ad litem in both the 1967 and 1968 proceedings.[8]

The record shows that during the 1967 proceedings, Hamilton called Stewart to testify concerning his knowledge of the circumstances surrounding the child's claim to the estate. Again, despite Stewart's extensive knowledge of these circumstances from his involvement with the child's father, mother, grandmother, and aunt, he revealed nothing, with the sole exception of producing the original custody and support agreement. Certainly he did not reveal the contents of all the correspondence and

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[8] It is interesting to note that Smith, who was the administratrix for the estate during 1967 and 1968, also acted as the guardian for Williams, Jr., during these proceedings. Further, she had also acted as the guardian for Williams, Jr., while administratrix, in 1963, in the proceeding to allow Williams, Jr., to contract with Fred Rose Music, Inc., concerning his interest in his father's copyright renewals. It is also interesting that this procedure is in substance the one suggested by Stewart in his July 5, 1962, letter, as alternative "c", that is, a legal way to cut off Stone's right to copyright renewals she was entitled to under federal law, even though illegitimate.

information he knew concerning Stone's adoption and the information furnished to the Department of Pensions and Security. Smith, too, aside from advising the court of the existence of the child, remained silent about what she knew.

Stewart's plan, as proposed in his July 5, 1962, letter to Wesley Rose's attorney, suggested that the person appointed as guardian ad litem "might be vigorous in asserting this right [to copyright renewals]." Hamilton was vigorous. He fought for the child's rights, even without material evidence concerning her paternity. Hamilton argued that Hank Williams had accepted the child as his own and had made legal arrangements to have full custody and control of the child, and that if the law did not recognize her right to inherit simply because she was illegitimate, then the law was unconstitutional and should be changed.[9] Despite Hamilton's efforts, with the

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[9] In fact, on May 28, 1968, just 4 months after Judge Emmet denied the guardian ad litem permission to appeal, the Supreme Court of the United States, in *Levy v. Louisiana*, 391 U.S. 68, 88 S.Ct. 1509, 20 L.Ed.2d 436 (1968), commented on the harsh common law concept that illegitimate children were *nullius fillius*, as follows:

> "We start from the premise that illegitimate children are not 'nonpersons.' They are humans, live, and have their being. They are clearly 'persons' within the meaning of the Equal Protection Clause of the Fourteenth Amendment.
>
> "* * * *
>
> "Why should the illegitimate child be denied rights merely because of his birth out of wedlock?

(Continued on following page)

evidence that it had before it at the time, the trial court ruled against the child in both the 1967 and 1968 proceedings.[10] Hamilton, then as the guardian ad litem, requested permission to appeal the rulings on behalf of the child,

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(Continued from previous page)

> He certainly is subject to all the responsibilities of a citizen, including the payment of taxes and conscription under the Selective Service Act. How under our constitutional regime can he be denied correlative rights which other citizens enjoy?"

391 U.S. at 70-71.

[10] In its December 1, 1967, order, the court stated:

> "In the opinion of the Court, there has not been sufficient compliance with the requirements of Section 11 of Title 27 of the Code of Alabama to give the child in question any right of inheritance from Hiriam Hank Williams or to receive any part of his estate. The Court is further of the opinion that under all the evidence heard and considered by the Court, Randall Williams is the sole heir and only distributee of the Estate of Hiriam Hank Williams . . . ."

Furthermore, in its January 30, 1968, decree, the court stated that while it was "impressed with the argument of the Guardian Ad Litem [for Stone]," and "adopt[ed] the sound reasoning . . . that the time is long past due when illegitimate offspring should be afforded adequate property rights," the court, nevertheless, found that Stone had been adopted and that her adoptive parents, after having been notified of the proceedings, "chose not to pursue any action in regard to these proceedings," and that she could not recover.

The trial court's conclusion that adoption precluded an "after-adopted" illegitimate child from inheriting was erroneous, however. This subject is discussed, *infra*, under the heading "Intestate Succession and the Illegitimate Child."

but the court refused to grant permission. Thus, Hamilton's court-appointed representation of the Stone child ended, and nothing further was done on her behalf.[11]

Despite the court's rulings in the 1967 and 1968 proceedings, when Stewart became the administrator of the estate in 1969, he began setting aside a share of the estate for Stone. During that time, in a series of letters to the attorney for Williams, Jr., Stewart wrote that "the last two distributions to Randall . . . were actually an encroachment on the one-half of the Estate which could conceivably be claimed by the child." Stewart's concealment with regard to the Stone child continued, and in April 1974 he alerted counsel for Williams, Jr., that Stone had traveled to Montgomery and claimed her homestead that had been set aside for her in the Lillian Stone estate. Stewart wrote: "[Her] ancestry may well be reasonably obvious to her, and further trouble may ensue." However, the estate of Hank Williams was closed in August 1975, without further incident, and the money that Stewart had been setting aside for Stone was distributed along with the other assets of the estate.

The law in Alabama concerning legal fraud has been stated by this Court as follows:

> "To constitute fraud, in its legal signification, it is not necessary that one intend to injure another. . . .

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[11] See our discussion, *infra*, under "Error of Law," concerning the right of a guardian ad litem to appeal an adverse ruling on behalf of a child, and the duties of a guardian ad litem and the duty of the court when a minor's interest is involved.

> " 'If fraud is proved the law will infer an improper motive, and the actual motive of the speaker is immaterial. In other words, it is not essential that the [misrepresentor] be motivated by a desire to injure complainant or to benefit himself; and it makes no difference that his motive was solely to benefit a third person.' "

Duncan v. Johnson, 338 So. 2d 1243, 1250 (Ala. 1976) (quoting C.J.S. *Fraud* § 26). With regard to fraud on the court, this Court has further recognized the following principles:

> " '[Where] the fraud itself [is] to be consummated through the instrumentality of a court of justice, the protection of the court demands that there should be a remedy. We can conceive of no worse reflection upon a judicial system, no lowering of its dignity and of the respect due to its findings more regrettable than that the tribunal of justice may become an impotent agency of fraud against those who look to it for protection and who are free from fault. . . .' "

Duncan, 338 So. 2d at 1251 (quoting *Bolden v. Sloss-Sheffield Steel & Iron Co.*, 215 Ala. 334, 335, 110 So. 574, 575 (1925)). Stated differently:

> " 'Where [fraud] relates to the conduct of the suit, as where it prevents a party from asserting his rights, there is no fair adversary proceeding, *and equity will interfere.*' "

Eskridge v. Brown, 208 Ala. 210, 211, 94 So. 353, 354 (1922) (quoting 6 *Pom. Eq. Jur.* at 1092) (emphasis added).

The idea that as an attorney, Stewart had a fiduciary relationship with the estate of Hank Williams, his client, is elementary. See *Jones v. Caraway*, 205 Ala. 327, 87 So.

820 (1921); *Kidd v. Williams*, 132 Ala. 140, 143, 31 So. 458 (1901); and *Yonge v. Hooper*, 73 Ala. 119 (1882). In *Yonge*, this Court recognized that

> "[an] [a]ttorney and client sustain to each other the severe relation of trustee and *cestui que trust*, and their dealings together are subject to the same intendments and imputations, as those which obtain between other trustees and their beneficiaries."

Yonge, 73 Ala. at 121.

Furthermore, Stewart, as administrator, and Smith, as administratrix, held the position of a trustee, and their administration of the estate was that of a trust. See *Clark v. Clark*, 287 Ala. 42, 47, 247 So. 2d 361, 365 (1971); *Keith & Wilkinson v. Forsythe*, 227 Ala. 555, 557, 151 So. 60, 61 (1933). In *Maryland Casualty Co. v. Owens*, 261 Ala. 446, 451, 74 So. 2d 608, 612 (1954), this Court recognized that

> "[a]n executor occupies a position of trust with respect to those interested in the estate and is the representative of the decedent, of creditors and of the legatees and distributees."

(Citing *Durden v. Neighbors*, 232 Ala. 496, 168 So. 887, 889 (1936); and *Amos v. Toolen*, 232 Ala. 587, 168 So. 687, 692 (1936).) At the time this estate was being administered, the law of Alabama imposed the following requirements upon an administrator:

> "In making settlements of an administration, the executor or administrator must proceed as follows:
>
> "* * * *
>
> "He must, at the same time, file a statement, on oath, of the names of the heirs and legatees

> of such estate, specifying particularly which are under the age of twenty-one years. . . ."

Tit. 61, § 295, Code of Alabama, 1940, presently Code 1975, § 43-2-502. This Court has held that an administrator who knowingly and willingly conceals from the court administering an estate the name of an heir or distributee, is guilty of such a fraud on the court as to authorize a court of equity to set the decree of settlement aside. See *Fidelity & Deposit Co. of Maryland v. Hendrix*, 215 Ala. 555, 112 So. 117 (1927); and *cf., Leflore By and Through Primer v. Coleman*, 521 So.2d 863 (Miss. 1988); *Smith By and Through Young v. Estate of King*, 501 So.2d 1120 (Miss. 1987); *Matter of Estate of Flowers*, 493 So.2d 950 (Miss. 1986).

We recognize, generally, that mere silence does not constitute fraud; however, a different rule applies where confidential relations or particular circumstances exist. Code 1975, § 6-5-102, provides:

> "Suppression of a material fact which the party is under an obligation to communicate constitutes fraud. *The obligation to communicate may arise from the confidential relations of the parties or from the particular circumstances of the case.*" (Emphasis added.)

Furthermore, it has been recognized that

> "[a] fiduciary duty need not spring from a legal relation but may arise from a relation which is merely moral, social, domestic, or purely personal in character, and that fiduciary relations embrace not alone the obviously confidential relations such as attorney and client, principal and agent, guardian and ward, and the like, but also every relation in which as matter of fact there is confidence reposed on one side and a

> resultant domination and influence on the other."

17 C.J.S. *Contracts*, § 154 at 911 (1963).

In the present case, both Stewart and Smith had a legal obligation, as either the attorney or administrator of the estate or because of the particular circumstances involved, to advise the court at the earliest possible date that the Stone child existed and possessed potential claims to the estate as an heir, being a natural child of the deceased, and as a creditor under the child support agreement. *Because the corpus of the estate involved copyright renewals, and because illegitimates could share in such rights under federal law, the "particular circumstances" of this case make the legal obligation a weightier one.* The evidence shows that Stewart, as administrator, and as attorney for Smith, knew that the child had a substantial claim to the copyright renewals.[12] Except for efforts by guardian ad litem Hamilton, no effort on behalf of Stone was made to establish her right to inherit or to establish her contract claim for child support under the 1952 agreement. Likewise, because all of the material circumstances surrounding her paternity were never made known to the court in the ancillary proceedings brought on behalf of Williams, Jr., Stone never received a "fair adversary proceeding," to which she was entitled by law. See *Eskridge*, 208 Ala. 210, 211, 94 So. 353, 354 (1922).[13]

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[12] His withholding of one-half of the monies, even after the favorable 1967 and 1968 decrees, and his 1962 correspondence shows his concern about the child's ever discovering who she was.

[13] We note that, usually, paternity or legitimation proceedings are initiated by a parent of the child; however, in this case

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Whether Stewart and Smith intended to deceive the court or merely sought to protect their own interests or the interests of Williams, Jr., or any other parties interested in the estate, or whether they intended to injure the Stone child is immaterial. Inasmuch as they remained silent about material facts concerning the Stone child, known to them, upon which the law imposed a legal duty to communicate, their actions constituted legal fraud. See Code 1975, § 6-5-102, formerly Tit. 7, § 109, Code of Alabama, 1940.

Further, it would appear that Smith's eventual notification to the court about the agreement, in 1967, was not for the purpose of showing Stone's right to share in the estate, but, rather, for the opposite purpose of showing that she had no right to share in the estate.[14] In her answer to the 1967 action, Smith responded that "she believes Randall Hank Williams is the sole heir of his

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Stone's natural parents were deceased or unavailable and her adoptive parents were hostile in regard to this matter. Furthermore, once Stone was made a ward of the state, the Alabama Department of Pensions and Security could have pursued the child's rights; however, it did not. Finally, while Stone was a ward of the court, Judge Emmet, although convinced that the law regarding illegitimates was not right (and the Supreme Court of the United States so held in *Levy v. Louisiana* shortly thereafter). he, too, failed in his duty to protect the child's right by refusing to grant her guardian ad litem permission to appeal (see discussion, *infra*, "Error of Law").

[14] We have previously noted that this procedure was substantially what Stewart had suggested to Wesley Rose's attorney in 1962 as an alternative way to forever bar Stone from sharing in the copyright renewals.

father, Hiriam 'Hank' Williams, . . . ; however, in the possession of the administratrix are certain documents which may give rise to or affect the rights of another minor to share in said estate . . . ." That answer was prepared by Stewart, who at that time was aware that the *copyright laws allowed illegitimates to inherit.*

We cannot say that Smith's and Stewart's concealment did not affect the judgments ultimately rendered in the 1967 and 1968 proceedings, which denied Stone any right in her natural father's estate. While we recognize that the law in Alabama at that time was unfavorable to illegitimate children with regard to intestate succession from their *fathers,* we cannot say that Stone would not have prevailed upon appeal, because of the strong statements made in *Levy v. Louisiana,* which was extant at the time the appeal would have been pending had one been filed. In short, this Court very well could have reached the result it reached later in the case of *Everage v. Gibson,* 372 So. 2d 829 (Ala. 1979), cert. denied, 445 U.S. 931 (1980), and could have recognized Stone's right, as the natural child of Hank Williams, to inherit from his estate. Because of the circumstances surrounding the 1967 and 1968 decrees, there are grounds for setting them aside, at least in part, for the reasons we shall hereinafter state.

Error of Law

At this time, we address another circumstance bearing on the validity of the 1967 and 1968 judgments. The record shows that after the trial court ruled against Stone in both proceedings, Hamilton, as her guardian ad litem, requested permission to appeal the rulings on her behalf.

Even though Judge Emmet thought the law was wrong, he denied Hamilton permission to appeal. After being denied the right to appeal, Hamilton did nothing further on her behalf.

Under the law as it exists today and as it was at the time of the proceedings in question, Stone, or her guardian ad litem acting on her behalf, had the right to appeal the trial court's adverse ruling to this Court. Title 7, § 754, Code of Alabama, 1940 (Recompiled 1958) (now, Code 1975, § 12-22-2) provided for appeals from the circuit court to the Supreme Court, as follows:

> "From any final judgment or decree of the circuit court, or courts of like jurisdiction, or probate court, except in such cases as are otherwise directed by law, *an appeal lies to the supreme court, for the examination thereof as matter of right, on the application of either party, or his personal representative;* and the clerk, register, or judge of probate, must certify the fact that such appeal was taken, and the time when, as part of the record, which gives the supreme court jurisdiction of the case." (Emphasis added).

In addition, Tit. 7, § 786, Code of Alabama 1940 (Recompiled 1958), provided that "a guardian ad litem may take and prosecute an appeal without giving any security for costs of the appeal, and shall not be liable personally for costs of appeal."

In the present case, after the trial court refused to grant permission to appeal the adverse ruling, Hamilton understandably considered his representation of the child ended. The general rule is that "[a] guardian ad litem or next friend is always subject to the supervision and control of the court, and he may act only in accordance with

the instructions of the court." 43 C.J.S. *Infants* § 234, p. 610 (1978). Furthermore, at the time of these proceedings, this Court had construed Tit. 7, § 786, to hold that a guardian ad litem was *personally liable* for the costs of an appeal taken from a decree of the probate court, if the judgment of the lower court was affirmed. See *Ward v. Mathews*, 122 Ala. 188, 25 So. 50 (1898).

Because Stone was a ward of the court, it was the duty of the court, even though it had appointed a representative for Stone, to protect her rights and interests, on its own motion.[15] See 43 C.J.S. *Infants*, § 220, p. 564; see

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[15] We are aware that there are many settlements involving minors made in pending lawsuits, in which courts are called upon to make certain that such settlements are in the best interest of the minor. We further note that Alabama law has been especially sensitive with regard to the rule that any settlements made on behalf of minors be approved by the court. In *Large v. Hayes*, 534 So.2d 1101 (Ala. 1988), this Court recognized the role of the trial court in determining what is in the "best interest of the minor," as follows:

> "This Court has recognized the special nature of an attempted settlement of a minor's claim. Before such a settlement can be approved, there must be a hearing, with an extensive examination of the facts, to determine whether the settlement is in the best interest of the minor. . . .
>
> > " ' "The Court may, upon being advised of the facts, upon hearing the evidence, enter up a valid and binding judgment for the amount so attempted to be agreed upon, but this is not because of the agreement at all – that should exert no influence – but because it appears from

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also *Fletcher v. First Nat'l Bank of Opelika*, 244 Ala. 98, 11 So. 2d 854 (1943) (which recognized that a court of equity is the guardian of all infants within its jurisdiction). Therefore, there can be no question that the trial court's refusal to allow Stone to utilize her right to appeal constituted an error of law, especially when the judge's order that disallowed her claim stated on its face that he did not consider it to be in her best interest.

Code 1975, § 12-11-60, formerly Code 1940, Tit. 13, § 145, provides:

> "(a) When any error of law or fact has occurred in the settlement of any estate of a decedent to the injury of any party, without any fault or neglect on his part, such party may correct such error by filing a complaint in the circuit court within two years after the final settlement thereof. . . .
>
> "(b) The limitations of subsection (a) of this section do not extend to infants or persons of unsound mind who are allowed two years after the termination of their respective disabilities, but in no case to exceed 20 years."[16]

Under this section, an error of law is sufficient to warrant modification of the judgment rendered in the shadow of

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> the evidence that the amount is just and fair, and a judgment therefor will be conservative of the minor's interests." '"

Large, 534 So.2d at 1105 (citations omitted).

[16] The issues of statutes of limitations and laches, as they relate to this case, are treated in our discussion under the heading "Timeliness," *infra*.

that error, even in the absence of fraud. See *Maryland Casualty Co. v. Owens*, 261 Ala. 446, 450, 74 So. 2d 608, 610-11 (1954).

Similarly, Rule 60(b)(6), Ala.R.Civ.P., provides that the court may relieve a party from the operation of a final judgment for any reason justifying such relief. An error of law, such as the one committed by the trial court in the 1967 and 1968 proceedings involving this estate, and that error's attendant consequences, would certainly appear to justify relief under this rule.

Therefore, even absent a finding that the judgments rendered against Stone in 1967 and 1968 were tainted by legal fraud, we would be compelled by the serious nature of the error committed by the trial court in those proceedings to revisit the judgments and modify their operation with respect to her rights, especially since the beneficiaries of those decrees and of the subsequent final settlement are the same individuals who were attempting to secure a judicial determination that would bar her right to share in copyright renewals. At the very least, this error of law aborted any res judicata effect of the 1967 and 1968 decrees.

Timeliness

Having found merit in Stone's claim that the 1967 and 1968 judgments rendered against her should be set aside, we now address whether her delay in asserting

that claim was reasonable.[17] Her claim, being equitable in nature, is governed by the doctrine of laches.

The doctrine of laches is purely equitable in nature and may be invoked to deny equitable relief to one guilty of unconscionable delay in asserting a claim. See *United States v. Olin Corp.*, 606 F.Supp. 1301, 1309 (N.D. Ala. 1985). However, this Court has recognized that the mere lapse of time alone does not establish laches. See *Davis v. Thomaston*, 420 So. 2d 82, 84 (Ala. 1982). Rather, the question of laches is one that must be decided upon the peculiar facts and circumstances of each case. See *Lindley v. Lindley*, 274 Ala. 570, 575, 150 So. 2d 746, 750 (1963); and *Jones v. Boothe*, 270 Ala. 420, 424, 119 So. 2d 203, 207 (1960). In *Multer v. Multer*, 280 Ala. 458, 462, 195 So. 2d 105, 109 (1966), this Court recognized that

> " '[l]aches is not fixed by a hard and fast limit of time, but is a principle of good conscience dependent on the facts of each case.' "

(Quoting *Woods v. Sanders*, 247 Ala. 492, 496, 25 So.2d 141, 144 (1946)). In addition, this Court has held that a party will not be estopped from asserting a fact of which he was ignorant, if upon discovery of that fact, he promptly seeks relief. See *Duncan v. Johnson*, 338 So. 2d 1243, 1254 (Ala. 1976). Stated differently, the doctrine of laches will not apply in the absence of information and knowledge sufficient to put one on notice of a claim. *Id.*; see also *Sims v. Lewis*, 374 So. 2d 298, 305 (Ala. 1979); and *Cotney v.*

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[17] The reader should bear in mind that no issue has been raised as to the timeliness of Stone's paternity action below. Therefore, our discussion concerns only her action to have the prior judgments set aside on the basis of fraud.

Eason, 269 Ala. 354, 357, 113 So. 2d 512, 516 (1959). The law recognizes that for the doctrine of laches to apply, the party claiming the right must have failed to do something that equity would have required him to do. See *Olin Corp.*, 606 F.Supp. at 1309; and *Sims*, 374 So. 2d at 305.

In the present case, the estate of Hank Williams was not finally closed until August 1975. The record shows that only one year earlier, in 1974, was the truth of Stone's paternity first suggested to her, and, at that time, it appears to have been presented merely as theory or speculation. Before 1974, for personal reasons, Stone's adoptive parents had vowed that she never know the identity of her natural father, and it appears that they were successful in concealing this information from her. The record also shows that at the early age of three, Stone had been transferred from Montgomery, permanently, to an adoptive home in Mobile, which effectively removed her from any persons who might have known her identity. In addition, as previously discussed, the record is quite clear that the attorney and administratrix of the estate and others did all that they could, including committing legal fraud, to ensure that she never discover her identity or any facts material to her claim, and the record shows that the State of Alabama, acting through the Department of Pensions and Security, and the courts essentially contributed to the concealment of her parenthood, although aware of it. Any public records, or documents that might have led to her discovery of her paternity at an earlier date had been ordered sealed by the court from the time that she was a small child. Upon retrieving these sealed documents in *1985*, Stone promptly made a demand for her share, and the plaintiffs

instituted this action for a determination of her rights in view of the prior judgments.[18] Based on all of these considerations, we conclude that her attack on, and request for relief from, the prior judgments rendered in this matter are not time-barred.

Intestate Succession and the Illegitimate Child

Having found that the judgments rendered against Stone in the 1967 and 1968 proceedings may be set aside

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[18] We also note that Williams, Jr., Acuff, and Rose are the parties who initiated the litigation from which this appeal arose, and who, themselves, sought a resolution of the matter of Stone's rights in the estate of Hank Williams.

In their complaint for declaratory judgment, Williams, Jr., Acuff, and Rose requested the following relief:

> "2. That this Court enforce and uphold in every respect the prior Orders and Judgments of this Court in Civil Action Nos. 25,056 and 27,960, declare them valid and binding upon the parties hereto, and enjoin Catherine Yvonne Stone from making further claims and demands relative to the estate of Hiriam 'Hank' Williams or the aforesaid copyright interest or renewals thereof.
>
> "3. That in the event his Court alters, modifies or otherwise changes the prior Orders and Judgments in Actions No. 25,056 and 27,960 that this court proceed to adjudicate and determine the rights of the parties hereto with regard to the Estate of Hiriam 'Hank' Williams and the copyright and renewal copyright interest of the musical compositions of Hiriam 'Hank' Williams.
>
> "4. That this Court will grant to the Plaintiffs such other, further and different appropriate relief to which they may be entitled."

with respect to her right to share in the estate, and, furthermore, having found that her claim to set aside those judgments is not time-barred, we hold that she presented evidence that she was entitled to a determination of her rights, and to reopen the estate, as she requested in her third-party complaint. Therefore, the trial court erred in entering summary judgment on her claim. Because the entire record is before this Court, even though an appeal was not taken from the other judgments, in the interest of judicial economy, we will now address those rights rather than remand the cause to the trial court.

The law concerning the right of an illegitimate child to inherit through intestate succession has seen many changes over the years. At common law, an illegitimate child, who had not been legitimated, was considered the child of no one and could inherit from no one. See *Williams v. Witherspoon*, 171 Ala. 559, 55 So. 132 (1911). The courts considered an illegitimate child "*nullius filius*," the "heir to nobody," and thus, the child "ha[d] no ancestor from whom any inheritable blood [could] be derived." *Lingen v. Lingen*, 45 Ala. 410, 413 (1871) (quoting 1 Wendell's Blackstone, 459).

By 1929, in the case of *Moore v. Terry*, 220 Ala. 47, 124 So. 80 (1929), overruled in part by *Everage v. Gibson*, supra, this Court had recognized that an illegitimate child, who had not been legitimated, could inherit from his mother, but not from his father, even if paternity was shown. This change was also reflected in Code 1940, Tit. 16, § 6, which provided that "[e]very illegitimate child is considered as the heir of his mother, and inherits her estate in whole or in part, as the case may be, in like

manner as if born in lawful wedlock." Later, in *Hudson v. Reed*, 259 Ala. 340, 66 So. 2d 909 (1953), this Court described the common law rule as a "harsh rule," and held that an illegitimate child, because of this statute, could inherit not only *from* his mother but also *through* his mother.

Between 1929 and 1979, however, the law in Alabama recognized only the following two methods by which an illegitimate child could be legitimated in order to inherit from its father through intestate succession: 1) by marriage of the parents, accompanied by the father's recognition of the child; or 2) by a written declaration, attested by two witnesses, and filed with the judge of probate.[19]

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[19] It is quite possible that the 1952 custody and support agreement would have been sufficient to legitimate Stone if Stewart, the child's mother, or other parties, including the State of Alabama, had attempted to utilize this method. Code 1940, Tit. 27, § 11, in effect at the time of Stone's birth, provided specifically as follows:

> "The father of a bastard child may legitimate it, and render it capable of inheriting his estate, by making a declaration in writing, attested by two witnesses, setting forth the name of the child proposed to be legitimated, its sex, supposed age, and the name of the mother, and that he thereby recognizes it as his child, and capable of inheriting his estate, real and personal, as if born in wedlock; the declaration being acknowledged by the maker before the judge of probate of the county of his residence, or its execution proved by the attesting witnesses, filed in the office of the judge or probate, and recorded in the minutes of his court, has the effect to legitimate such child."

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See *Moore*, 220 Ala. 47, 124 So. 80 (1929); see also Code 1923, §§ 9299, 9300, later codified at Code 1940, Tit. 27, §§ 10, 11, and Code 1975, §§ 26-11-1, 26-11-2.

Additionally, there were statutes in effect at the time of Stone's birth that provided that a father of an illegitimate child could be required to support the child, even though there had been no formal adjudication of paternity. See Code 1940, Tit. 34, §§ 89, 90. Under these provisions, a charge of nonsupport against the putative father could be sustained, even if he had not been adjudicated the father, if the putative father had publicly acknowledged or treated the child as his own in a manner to indicate his voluntary acknowledgement of parenthood. See *Law v. State*, 238 Ala. 428, 191 So. 803 (1939). These statutes evidence the policy of the law to compel the father of an illegitimate child to support that child if the father had *voluntarily acknowledged his parenthood*, as Hank Williams did here.[20]

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Normally, any agreement would have been filed before the father's death, but the statute was not so limited.

[20] We recognize that there is no Alabama case law on the issue of whether a purely contractual obligation to pay child support survives the death of the obligor; however, some jurisdictions, even at the time of Stone's birth, had held that death did not terminate a voluntary contractual obligation made by the decedent to pay child support, such as that made in the present case. We need not decide in this case whether a *court-ordered* obligation to pay child support survives the death of the obligor; however, we do hold that an agreement to pay child support, such as that involved in this case, that is purely

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After the United States Supreme Court decided the cases of *Trimble v. Gordon*, 430 U.S. 762 (1977), and *Lalli v. Lalli*, 439 U.S. 259 (1978),[21] Alabama's law concerning the right of an illegitimate child to inherit from its father changed dramatically. In *Trimble*, 430 U.S. 762 (1977), the Court found an Illinois statute, much like Alabama's Code 1975, §§ 26-11-1 and 26-11-2, which set forth the

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contractual and voluntarily entered without judicial compulsion, does not lose its enforceability at the death of the obligor, unless otherwise expressed.

We note, in particular, the following cases:

1) *In re Cirillo's Estate*, 114 N.Y.S.2d 799 (Queens Sur. 1952), in which the court, settling an account against the estate of the deceased, held that while generally a child support obligation ends with the death of the parent, the deceased's agreement to make support payments as long as his responsibility for the support of the illegitimate child existed under the law indicated that he intended to bind his estate beyond his death; and

2) *Stumpf's Appeal*, 116 Pa. 33, 8 A. 866 (1887), in which the court reversed a judgment disallowing the plaintiff's claim against the putative father's estate and held that there was nothing in the support agreement to indicate an intention by the obligor to limit his obligation to support his illegitimate child to his lifetime only and that the evidence showed that the purpose of the agreement was to save the mother from the expenses of rearing the child, and thus, the contract was continuing and binding on the decedent's estate.

See also, Annot., *Validity and Construction of Putative Father's Promise to Support or Provide for Illegitimate Child*, 20 A.L.R. 3d 500, 540 (1968).

[21] Of course, the rights of illegitimates to equal protection had been decided in *Levy v. Louisiana* in 1968.

two methods of legitimation discussed above, to be unconstitutional under an equal protection challenge. The Court stated the following:

> " 'The status of illegitimacy has expressed through the ages society's condemnation of irresponsible liaisons beyond the bonds of marriage. But visiting this condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual – as well as an unjust – way of deterring the parent.' "

Trimble, 430 U.S. at 769 (quoting *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 175 (1972)). In *Lalli*, 439 U.S. 259 (1978), the United States Supreme Court upheld, as constitutional, a similar New York statute because it provided that an illegitimate child could inherit from its father if there had been a judicial determination of paternity before the father's death.

In *Lalli*, Mr. Justice Powell, while recognizing, however, the importance of the competing state interest in the just and orderly administration of decedents' estates, stated as follows:

> "The primary state goal underlying the challenged aspects of § 4-1.2 is to provide for the just and orderly disposition of property at death. We long have recognized that this is an area with which the States have an interest of considerable magnitude. *Trimble*, [430 U.S. 762 (1977)] at 771; *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. at 170; *Labine v. Vincent*, 401 U.S. at

538; see also *Lyeth v. Joey*, 305 U.S. 188, 193 (1938); *Merger v. Grima*, 8 How. 490, 493 (1850).

> "This interest is directly implicated in paternal inheritance by illegitimate children because of the peculiar problems of proof that are involved. Establishing maternity is seldom difficult. As one New York Surrogate's Court has observed: '[T]he birth of the child is a recorded or registered event usually taking place in the presence of others. In most cases the child remains with the mother and for a time is necessarily reared by her. That the child is the child of a particular woman is rarely difficult to prove.' *In re Ortiz*, 60 Misc.2d 756, 761, 303 N.Y.S.2d 806, 812 (1969). Proof of paternity, by contrast, frequently is difficult when the father is not part of a formal family unit. 'The putative father often goes his way unconscious of the birth of a child. *Even if conscious, he is very often totally unconcerned because of the absence of any ties to the mother.* Indeed the mother may not know *who* is responsible for her pregnancy.' Ibid. . . .; accord, *In re Flemm*, 85 Misc.2d 855, 861, 382 N.Y.S.2d 573, 576-577 (Surr.Ct. 1975); *In re Hendrix*, 68 Misc.2d, at 443, 326 N.Y.S.2d, at 650; cf. *Trimble*, supra, at 770, 772."

439 U.S. at 268-69 ("who" emphasized in original; other emphasis added).

Further, Mr. Justice Powell quoted extensively from *In re Flemm*, 86 Misc.2d 855, 381 N.Y.S.2d 573 (N.Y. Sur. 1975), as follows:

> " 'An illegitimate, if made an unconditional distributee in intestacy, must be served with process in the estate of his parent or if he is a distributee in the estate of the kindred of a parent . . . . And, in probating the will of his parent (though not named a beneficiary) or in

> probating the will of any person who makes a class disposition to "issue" of such parent, the illegitimate must be served with process. . . . How does one cite and serve an illegitimate of whose existence neither family nor personal representative may be aware? And of great concern, how achieve finality of decree in *any* estate when there always exists the possibility however remote of a secret illegitimate lurking in the buried past of a parent or an ancestor of a class of beneficiaries? Finality in decree is essential in the Surrogates' Courts since title to real property passes under such decree. Our procedural statutes and Due Process Clause mandate notice and opportunity to be heard to all necessary parties. *Given the right to intestate succession, all illegitimates must be served with process. This would be no real problem with respect to those few estates where there are "known" illegitimates. But it presents an almost insuperable burden as regards "unknown" illegitimates.* The point made in the [Bennett] commission discussions was that instead of affecting only a few estates, procedural problems would be created for many – some members suggested a majority – of estates.' 85 Misc. 2d, at 859, 381 N.Y.S.2d, at 575-576."

439 U.S. at 270 (emphasis added).

Recognizing a different view in *Pickett v. Brown*, 462 U.S. 1, 103 S.Ct. 2199, 76 L.Ed.2d 372 (1983), the United States Supreme Court, in holding a Tennessee statute of limitations involving illegitimate children unconstitutional, stated:

> *"In view of the history of treating illegitimate children less favorably than legitimate ones, we have subjected statutory classifications based on illegitimacy to a heightened level of scrutiny.* Although

we have held that classifications based on illegitimacy are not 'suspect,' or subject to 'our most exacting scrutiny,' *Trimble v. Gordon*, [430 U.S. 762 (1977)], at 767; *Mathews v. Lucas*, 427 U.S., at 506, the scrutiny applied to them 'is not a toothless one. . . .' Id., at 510. In *United States v. Clark*, [445 U.S. 23 (1980)], we stated that 'a classification based on illegitimacy is unconstitutional unless it bears "an evident and substantial relation to the particular . . . interest [the] statute is designed to serve." ' 445 U.S., at 27. See also *Lalli v. Lalli*, [439 U.S. 259 (1978)], at 265 (plurality opinion) ('classifications based on illegitimacy . . . are invalid under the Fourteenth Amendment if they are not substantially related to permissible state interests'). We applied a similar standard of review to a classification based on illegitimacy last Term in *Mills v. Habluetzel*, 456 U.S. 91 (1982). We stated that restrictions on support suits by illegitimate children 'will survive equal protection scrutiny to the ex ent they are substantially related to a legitimate state interest.' Id., at 99.

"Our decisions in *Gomez* [*v. Perez*, 409 U.S. 535 (1973)] and *Mills* are particularly relevant to a determination of the validity of the limitations period at issue in this case. In *Gomez* we considered 'whether the laws of Texas may constitutionally grant legitimate children a judicially enforceable right to support from their natural fathers and at the same time deny that right to illegitimate children.' 409 U.S., at 535. We stated that 'a State may not invidiously discriminate against illegitimate children by denying them substantial benefits accorded children generally,' id., at 538, and held that 'once a State posits a judicially enforceable right on behalf of children to needed support from their natural fathers there is no constitutionally sufficient justification for denying such an essential right to a

> child simply because its natural father has not married its mother.' Ibid. *The Court acknowledged the 'lurking problems with respect to proof of paternity,' ibid., and suggested that they could not 'be lightly brushed aside.' Ibid. But those problems could not be used to form 'an impenetrable barrier that works to shield otherwise invidious discrimination.'* Ibid." (Emphasis added.)

462 U.S. at 8-9.

Consequently, in 1979, this Court, in the case of *Everage v. Gibson*, 372 So. 2d 829 (Ala. 1979), cert. denied, 445 U.S. 931 (1980), in order to avoid finding Alabama's statutory scheme for intestate succession unconstitutional, construed it to include a third method of legitimation, i.e., a judicial determination of paternity made within two years of birth and during the father's lifetime. The *Everage* Court gleaned this third method from the child support statutes found at Code 1975, § 26-12-1 et seq. In 1982, the Alabama legislature superseded *Everage* and wrote this procedure into the Probate Code itself, in § 43-8-48, which provides that an illegitimate child is considered to be the child of the father if the parents marry or if paternity is established by an adjudication before the death of the father or *thereafter by clear and convincing proof*.[22] Then, in addition, in 1984, the

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[22] While not at issue in the present case, it is worth noting that the comments to this section expressly state that there is no time limitation in which to bring an action for paternity under this section because the drafters had serious reservations about the constitutionality of the former two-year limitations period adopted in *Everage*, and rightfully so. See *Abrams v. Wheeler*, 468 So. 2d 126 (Ala. 1985) (which recognized that the two-year limitations period in *Everage* was unconstitutional).

legislature repealed Code 1975, § 26-12-1 et seq., and replaced those sections with the Alabama Uniform Parentage Act, found at Code 1975, § 26-17-1 et seq. Like the child support statutes it replaced, the AUPA sets forth a mechanism whereby a judicial determination of paternity can be made. Therefore, there are presently two statutory schemes for judicial determination of paternity, one in the Probate Code and one in the AUPA.

Under the law as it exists today, there can be no question that where, as in this case, paternity has been established by clear and convincing evidence,[23] the law

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[23] For the purpose of clarity, we briefly recap the evidence that compelled the trial court's finding of paternity that is now undisputed in this case: 1) the 1952 custody and support agreement, that was drafted by Williams's attorney, refers to Hank Williams throughout as the "father" of the child; 2) the 1952 agreement, itself, requires a relinquishment by the mother of virtually all rights in the child to Hank Williams; 3) the 1952 agreement provided that the mother be given a one-way plane ticket to California, and that the child live with Lillian Stone, Williams's mother, for two years, during which time he would fully support the child; 4) the 1952 agreement provided that at the age of 3, the child "was to live with him [Hank Williams] continuously and be wholly and completely supported for by him, and cared for by him" (it is interesting to note that at the time this agreement was drafted, Williams, Jr., did not live with his father, but rather, lived in Tennessee with his mother, Audrey Williams; it appears, then, that Hank Williams attempted to provide the opportunity for closer parent-child relationship with Stone, who was to live with him, than that being enjoyed by his other child); 5) Lillian Stone, Irene Smith, and other family members acknowledged and publicly held the child out as the daughter of Hank Williams; and 6) the records of the Montgomery County Department of Public

(Continued on following page)

recognizes the right of the child to inherit through intestate succession. In brief response to the argument that Stone is barred from establishing her rights in the estate by operation of the doctrines of res judicata and collateral estoppel, we note the following. First, with regard to the issue of Stone's paternity, it is clear from the record that this issue was not adjudicated in the 1967 and 1968 proceedings. The court stated that it "[did] not believe that it [was] necessary to make this . . . determination." Furthermore, the issue of Stone's paternity was not appealed to this Court, and therefore, no arguments concerning the issue of her paternity are material. Finally, as for the issues regarding Stone's rights that were adjudicated in the 1967 and 1968 proceedings, the fact that those determinations were influenced by legal fraud on the court renders the doctrines of res judicata and collateral estoppel inapplicable, especially in this case, which involves the illegitimate child's right to share in the proceeds of copyright renewals that admittedly would have been payable to her as an illegitimate had her paternity not been concealed. See Code 1975, § 43-8-48; and *Cotton v. Terry*, 495 So. 2d 1077 (Ala. 1986). We recognize that the law at the time of her father's death had not yet recognized the third method of legitimation for the purpose of

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(Continued from previous page)

Welfare repeatedly document that Stone's natural father was Hank Williams. Therefore, unlike many cases in which the alleged father denies paternity and wishes to have nothing to do with the child, this is a case in which the father not only wished to accept responsibility for the child, but convinced the mother to give the child up, so that it might live with him and be reared by him.

intestate succession, i.e., a judicial determination of paternity; however, we also recognize that the law as it existed at that time has since been found to be unconstitutional by the United States Supreme Court in *Trimble v. Gordon*, 430 U.S. 762 (1977), and by this Court in *Everage v. Gibson*, 372 So.2d 829 (Ala. 1979).

In an action, such as the present one, that is not time-barred and is properly before this Court, we are bound to apply a constitutional law as it exists at the time the appeal is heard. This situation has been addressed by this Court and the Court of Civil Appeals in the cases of *Cotton v. Terry*, 495 So. 2d 1077 (Ala. 1986); *Abrams v. Wheeler*, 468 So. 2d 126 (Ala. 1985); and *Free v. Free*, 507 So. 2d 930 (Ala.Civ. App. 1986).

In *Cotton*, 495 So. 2d 1077 (Ala. 1986), an illegitimate child brought an action to establish paternity under Code 1975, § 43-8-48(2)(b), 11 years after the death of the alleged father. In construing § 43-8-48(2)(b), this Court held:

> "It may be seen from the plain language of the statute that paternity of an illegitimate child may be established *after the death of the father* through an adjudication supported by clear and convincing evidence. *When so established, such a child may inherit from the father through intestate succession.*" (Second emphasis added.)

Cotton, 495 So. 2d at 1079. In *Cotton*, as in the present case, there was clear evidence that the alleged father recognized the child as his and held himself out as the child's father. Yet, in *Cotton*, as in the present case, the law at the time of the alleged father's death would not have recognized the child as an heir. Even so, this Court

did not apply an unconstitutional law to the parties, but, rather, applied the law as it existed at the time of the appeal. Also, in *Abrams v. Wheeler*, 468 So. 2d 126 (Ala. 1985), an illegitimate child brought a paternity action before the death of the father, but after the expiration of the two-year limitations period that had been adopted in *Everage*, 372 So. 2d 829 (Ala. 1979). However, this Court refused to apply the two-year limitations period because it had since been found to be unconstitutional. Instead, it applied the law as it existed at the time of the appeal, and found the action not time-barred. Again, in *Free v. Free*, 507 So. 2d 930 (Ala.Civ. App. 1986), an illegitimate child brought an action under § 43-8-48(2)(b), not only after the death of the father, but also 20 years after the child had reached the age of majority. Despite the arguments by the legitimate heirs, the Court of Civil Appeals refused to apply the law in effect at the time of the death of the father or at the time of the birth of the child because that law had since been found unconstitutional.[24]

To the extent that there remains a question of the effect of a subsequent adoption on the right to establish paternity, we address that issue briefly. Code 1975, § 43-8-48(1), part of the Probate Code, states:

> "An adopted person is the child of an adopting parent and not of the natural parents . . . ."

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[24] While the paternity action is not an issue in the present case, it is interesting to note that Stone brought this action to set aside the former judgments and to declare her rights in her natural father's estate within 11 years after reaching the age of majority, which compares favorably with the delay in *Cotton*, 495 So. 2d 1077 (Ala. 1986), and *Free*, 507 So. 2d 930 (Ala. Civ. App. 1986).

In addition, Code 1975, § 26-17-6(e), part of the Alabama Uniform Parentage Act, provides:

> "If the child has been adopted, an action [to establish paternity under this section] may not be brought."

The trial court in the 1968 proceedings was erroneously of the opinion that the fact that Stone had twice been adopted acted as a bar to her recovery under the predecessors to these statutes. The crucial fact that the trial court failed to recognize in this case was that Stone had not been adopted at the time of her natural father's death. Therefore, any right that she had to inherit from his estate would have vested *at the time of his death* and would not have been affected by her subsequent adoption some two years later.

We do not believe that, in drafting these statutes, the legislature intended to cut off the right of an "after-adopted" child to inherit from its natural parent's estate.[25] Construing these statutes liberally, in order to further the trend of ameliorating the "harsh rule" of the common law, which had been overturned in 1968 by the United States Supreme Court, and which had been criticized by this Court and by the trial court in 1968, we believe that these statutes are to be read to protect, rather than cut off, an "after-adopted" child's right to inherit

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[25] In fact, in 1954, at the time of Stone's adoption, Alabama's law provided specifically that "[n]othing in this chapter dealing with adoption shall be construed as debarring a legally adopted child from inheriting property from *its natural parent or other kin*." Code 1940, Tit. 27, § 5. (Emphasis added.)

from its natural parents. We hold, therefore, that because Stone had not been adopted at the time of her natural father's death, her rights in his estate had already vested, and, therefore, these statutes do not apply.[26]

Relief Granted

We have noted throughout this opinion the unique character of this case. In fashioning an appropriate remedy, we again take these peculiar circumstances into consideration.

This Court is ever mindful of the policy concerns surrounding the finality of judgments. At the same time, we cannot ignore the pleas for relief of an innocent party who has labored under judgments procured by legal fraud and suppression, and based upon a completely erroneous view of the applicable law, at a time when she was not only a minor but had no one except a guardian ad litem fighting for her rights, and he was effectively foreclosed from establishing them.

We further recognize that when an illegitimate child and a decedent's estate are involved, as is the case here, the law must protect two additional state interests – the right of the illegitimate child to inherit on a par with any legitimate children, and the important state interest in the just and orderly disposition of the decedent's estate.

We also recognize that

> " 'where the rights and obligations of the parties are necessarily blended in the judgment, and are

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[26] It should be apparent that the time lapse approved in this case may not be approved in other factual settings.

> thus dependent one upon the other, though they be not strictly joint, the appellate court will render such judgment as will permit and require the entire controversy to be settled in one proceeding, in which the rights and liabilities of all parties may be considered and consistently determined.' "

City of Tuscaloosa v. Fair, 232 Ala. 129, 136-37, 167 So. 276, 282 (1936), overruled in part on other grounds by *Jacks v. City of Birmingham*, 268 Ala. 138, 105 So.2d 121 (1958) (quoting *North Alabama Traction Co. v. Hays*, 184 Ala. 592, 596 64 So. 39, 40 (1913). In view of all of the evidence in this case relating to concealment by the attorney and the administratrix of the estate of Stone's claims to the estate and of facts material to those claims, in addition to the fact that the state agencies involved, as well as the court itself, failed to protect her rights, we cannot but conclude that equity and justice require that the 1967 and 1968 decrees rendered in this matter be set aside, in part. Accordingly, in order to balance all of the equities involved in this case, we hereby reverse the summary judgment on Stone's third-party claim in which she asked that the estate be reopened, and we order that the 1967 and 1968 judgments rendered in this matter be set aside, in part, and that Stone is entitled to receive her proportionate share of any proceeds of the estate of her natural father, Hank Williams, including any income or interest, and of any copyright royalties, but prospectively only, from the date that she gave notice of her claim, August 5, 1985. The trial court's judgment which, insofar as it denied her request for punitive damages against the third-party defendants, is affirmed.

While we find that the third-party defendants' sureties, Gulf American and American States, are not liable on Stone's fraud claim, their contractual liability arising out of the surety bond issued for this estate is a matter that remains to be determined by the trial court on remand.

The judgment of the trial court, insofar as it denied Stone's first claim for relief, is reversed, and this cause remanded for a full hearing and settlement, in a manner consistent with this opinion.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED WITH INSTRUCTIONS.

Hornsby, C.J., and Jones, Adams, and Steagall, JJ., concur.

Almon and Shores, JJ., dissent.

Houston and Kennedy, JJ., recused.

Catherine Yvonne Stone v. Gulf American Fire and Casualty Co., et al.

SHORES, JUSTICE (dissenting).

While I share my brothers' sympathy for the appellant, I cannot overlook the fact that every rule of law extant at every critical time in her life is against her position. Illegitimates could not inherit from their fathers at the time her father died (1953). They could not inherit at the time his estate was litigated in 1967 and 1968 when the Circuit Court of Montgomery County entered its final judgments to that effect. No appeal was taken from those final judgments.

The majority suggests that this Court might have changed the law had the guardian ad litem appealed the

1968 judgment. That assumption is speculation at best, but to give the appellant the benefit of that guess all of these years later is unprecedented.

The majority permits the appellant to challenge final judgments after approximately 17 years and more than 11 years after she reached majority in 1974, and would permit her to reopen the estate of her father, dead now for more than 36 years. All of this is permitted more than a decade and a half after a guardian ad litem appointed to represent her interests apparently concluded that he had discharged the duties of his office.

When are judgments final? The majority does not say. It attempts to temper its assault on the finality of these judgments by permitting the appellant to share in only a part of the decedent's estate: royalties paid since August 5, 1985, forward. Apparently, then, even the majority is unprepared to give the appellant full status as an heir to Hank Williams's estate. Apparently, she takes no interest in any real estate he may have had. She is allowed to participate in royalties payable only after August 5, 1985. Presumably, had Hank Williams's estate consisted of liquidated assets only, she could not have prevailed. I have never before heard of one's legal status as an heir turning on the nature of the assets of the estate. Not surprisingly, the majority cites no authority for its holding.

Because I feel bound to apply the law to these facts, sad though they are, I am compelled to dissent.

Almon, J., concurs.

APPENDIX B

IN THE CIRCUIT COURT FOR THE
FIFTEENTH JUDICIAL CIRCUIT
MONTGOMERY COUNTY, ALABAMA

RANDALL HANK WILLIAMS, and WESLEY H. ROSE and ROY ACUFF, as TRUSTEES in LIQUIDATION for STOCKHOLDERS of FRED ROSE MUSIC, INC., both TENNESSEE CORPORATIONS,	*	
PLAINTIFFS,	*	
vs.	*	CIVIL ACTION
CATHERINE YVONNE STONE,	*	NO. 85-1316-K
DEFENDANT.	*	
CATHERINE YVONNE STONE,	*	
COUNTER-CLAIMANT,	*	
vs.	*	
RANDALL HANK WILLIAMS,	*	
COUNTER-DEFENDANT.	*	
CATHERINE YVONNE STONE,	*	
THIRD PARTY PLAINTIFF,	*	
vs.	*	
GULF AMERICAN FIRE & CASUALTY COMPANY; AMERICAN STATES INSURANCE COMPANY; JONES, MURRAY & STEWART, P.C.; IRENE SMITH; THE ESTATE OF ROBERT B. STEWART; et al.	*	
THIRD PARTY DEFENDANTS.	*	

FINAL ORDER ON MOTIONS FOR SUMMARY JUDGMENT

This Cause comes before this Court upon an Action for Declaratory Judgment filed by Randall Hank Williams (hereinafter referred to as Williams, Jr.), Wesley H. Rose and Roy Acuff, as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc. and Milene Music, Inc. against Catherine Yvonne Stone (hereinafter referred to as Stone), as Defendant.

The Complaint as amended seeks to have the Court declare that Stone has no entitlement to any proceeds or royalties from the Estate of Hiriam "Hank" Williams (hereinafter referred to as Williams, Sr.), that, as an adopted child she is barred from attempting to establish that she is a child of Willliams, [sic] Sr. and that Williams, Jr. is the sole child of Williams Sr. and that Stone has never been adjudicated, under the laws of the State of Alabama, to be the Child of Williams, Sr. The Complaint further seeks to have the Court determine that Stone is barred from now attempting to establish that she is a child of Williams, Sr. by the applicable statute of limitations, the doctrine of laches, waiver and estoppel, and, because of this Court's previous judgments and orders. Finally, Plaintiffs pray that this Court will declare that Williams, Jr. is the sole child and sole heir of Williams, Sr., and thus is the sole person with rights in and to the Estate of Williams, Sr., including, but not limited to, rights in musical compositions, recordings, copyrights, use of the name and likeness of Williams, Sr., and all other tangible and intangible rights deriving from Williams, Sr.'s estate.

Simultaneously with the answer filed by Stone, a counterclaim was filed against Williams Jr. on October 14, 1986. In said counterclaim, Stone alleges that she is the natural daughter of Williams, Sr. and as such is entitled to one-half of the proceeds of his estate. She prays for the entry of judgment that establishes her paternity, and awards her her proportionate interest in the proceeds of the Williams, Sr. estate. She requests that a constructive or resulting trust on all monies derived by Williams, Jr. from the estate of Williams, Sr. be imposed.

Subsequent to her counterclaim, Stone filed on October 24, 1986, a third party complaint against Gulf American Fire and Casualty Company (hereinafter referred to as Gul American), American States Insurance Company (hereinafter referred to as American States), Jones, Murray & Stewart, P.C., Irene Smith, and the Estate of Robert B. Stewart. The third party complaint alleges that there was an intentional, willful and fraudulent concealment from the Court from 1953 through 1967 of Stone's identity and claim as a natural child of Williams, Sr. It further states that there was a conspiracy to defraud the Court and Stone by purposefully concealing pertinent information and theories that would presumably have entitled Stone to a share in the proceeds of the Williams, Sr. estate. Stone files a claim for relief against the sureties for payment on the surety bond issued by Gulf American and its successor American States on the administrator's bond issued in connection with the estate of Williams, Sr. Pursuant to the third party complaint, Stone requests that the estate be reopened and all previous orders of the Court affecting her status be declared null and void, that she be

allowed to share in a proportionate interest in the Williams, Sr. estate and that she recover general and punitive damages against all third party defendants.

At the present time, four motions for summary judgment are presently pending before the Court on behalf of the following:

1. Williams, Jr., Wesley Rose and Roy Acuff,
2. Irene Smith,
3. Jones, Murray & Stewart, P.C. and
4. Gulf American and American States.

By Order of the Court, pursuant to an agreement of the parties, the Estate of Robert B. Stewart was dismissed on April 3, 1987.

The Court has reviewed the various motions submitted along with the arguments and briefs of learned counsel and is now of the opinion that the Court has jurisdiction over the parties and of the causes of action. Pursuant thereto, the Court does hereby proceed to enter this its final order on all motions for summary judgment.

For the purposes of this order, the Court makes the following findings of fact which, in its opinion, are not in dispute.

On October 15, 1952, Williams, Sr. and Bobbie W. Jett entered into a written agreement relative to the custody and support of an unborn child that was being carried by Jett. The agreement was prepared by and executed in the presence of Robert B. Stewart, an attorney in the general practice of law in Montgomery County, Alabama.

The agreement stated that Bobbie W. Jett was pregnant and that Williams, Sr. may have been the father of said child. It was obviously the desire of the parties to agree to the support and custody of the child through the provisions of the agreement that they entered into. The agreement called for Williams, Sr. to provide room and board for Jett up until delivery, to provide periodic support for Jett pending the birth and to pay for all necessary expenses incurred for the actual delivery.

Jett was to be provided with a one way ticket to California by Williams, Sr. within 30 days after the birth of Jett's child and physical custody of the child would vest in Williams, Sr.'s mother, Mrs. Lillian Williams Stone. Specifically the agreement provided:

> After the birth of said child, both parties agree that it shall be placed with Mrs. W.W. Stone of Montgomery, and that she shall have full custody and control of said child for a period of two years after its birth and that during said time the said Hank Williams will provide and pay for a nurse and will pay all necessary expenses for clothing, food, medical care, and other attention which is required by the child during said two year period. . . . Beginning at the third birthday of said child, its custody and control shall vest in the said Hank Williams and the child shall live with him continuously and be wholly and completely supported by him, and cared for by him until it reaches its fifth birthday at which time the custody of the child shall be divided between both parties; . . . The responsibility for the support of said child shall be in Hank Williams both during the times when he has custody of the child and when it is visiting its mother.

> In view of the fact that the paternity of said child is in doubt and is not to be in any way construed as admitted by this agreement which is made solely because of the possibility of paternity, the said Bobbie W. Jett does hereby release the said Hank Williams from any and all further claims arising out of her condition or the birth of said child.

William, Sr. died intestate on January 1, 1953.

Lillian Williams Stone filed for letters of administration for the Williams estate in the Probate Court of Montgomery County, Alabama in January 1953. In her petition, she listed the heirs and distributees of the intestate estate as:

> Billie Jean Jones, "who states she is the widow",
> Randall Hank Williams, Jr.,
> Mrs. Irene Williams Smith, a sister
> Elonzo H. Williams, father and
> Lillian S. Stone, mother.

The Petition was prepared by Robert B. Stewart, the same attorney who had prepared the Williams, Sr./Jett agreement several months earlier.

Five days after the death of Williams, Sr., Jett gave birth to Stone who was given the name of Antha Bell Jett. By agreement, the baby was left with Mrs. Lillian Stone and Jett left the state.

On or about January 28, 1953, Lillian Stone contacted the Montgomery County Department of Pensions and Security about the possibilities of adopting the baby. In explaining how she came to have physical custody of the baby it is probable to assume as correct that she reported to them that Jett was the mother of the child and that her son, Williams, Sr. was the father.

The record of these proceedings seems to indicate that Lillian Stone, on several occasions told others that the baby had been fathered by her son.

In July of 1953 a petition for adoption was filed by Lillian Stone and her husband for the adoption of Antha Bell Jett (Stone) in the Probate Court of Montgomery County, Alabama. An interlocutory order of adoption granting temporary custody of Stone to William W. Stone and Lillian Stone was issued on September 21, 1953. The Montgomery County Department of Pensions and Security began supervision on that date and continued the same until a final decree of adoption was entered on December 23, 1954. At that time an adoptive parent/child relationship between William Wallace Stone and Lillian Williams Stone and Antha Bell Jett (Stone) was established. The child's name was changed to Catherine Yvonne Stone.

Lillian Williams Stone died on February 26, 1955. Stone's adoptive father was unwilling to continue the parent child relationship that had been established through the original adoption decree and Stone was made a ward of the State of Alabama by decree of the Juvenile Court of Montgomery County, Alabama on April 22, 1955. She was placed in the home of Mrs. Ilda Mae Cook as a foster child.

In February of 1956, Stone was transferred by the Montgomery County Department of Pensions and Security to Mobile, Alabama to the home of George Wayne and Mary Louise Deupree. Although it was initially another foster home placement, the Deupree's ultimately instituted adoption proceedings and on April 23, 1959 Stone was again adopted. Thus, a second adoptive/parent child

relationship was established for Stone, this time with Mr. and Mrs. Deupree. Stone's name was then changed to Cathy Louise Deupree.

The record contains correspondence between the attorney for the estate, Robert B. Stewart, and one Harold Orenstein, legal counsel for Wesley Rose. The correspondence was transmitted in 1962 and it contains discussions concerning the status of Stone. The Orenstein letter in pertinent part reads:

> D. *CATHERINE YVONNE STONE* – From the documents which you have furnished to me, Catherine Yvonne Stone . . . was returned to the State of Alabama Welfare Department after the death of Lillian Stone, and then re-adopted by persons unknown. Nowhere in the documents is there an indication of the names of the natural parents of Catherine Yvonne Stone. We assume that these documents were the ones that you mentioned had been sealed and could never be re-opened. . . . It would appear that some token payment to the State of Alabama Welfare Department . . . on behalf of this child may or may not be indicated. There is no way of evaluating now what a share of the renewal copyrights would be worth and no one could predict their valuation. We feel that a nominal payment might forever cut off the right of this child to the renewals.

In response, Stewart wrote in pertinent part:

> None of this would seem to affect the child's statutory right to copyright renewal. (Referring to the right of Stone to receive a homestead share in the Lillian Stone estate). The adoption might affect any right to which the child was entitled through the father. . . . (W)e may be

faced with a difficult problem, and certainly one we would not want to litigate.

As possible alternatives we can:

a. consider that by the adoption all rights under the renewal statute have been lost.

b. Try to explain the matter to our Welfare Department which does not want the child to know its background, but which would probably feel a duty to protect any right the child might have, and hope for a cooperative settlement and court approval.

c. Petition the court for approval of an agreement between Acuff-Rose and the Guardian, requesting that a guardian ad litem be appointed for Randall and another for all other possible minors who might claim a similar renewal right. If we use this procedure, the guardian ad litem will have to know what we are talking about, and might be vigorous in asserting this right. Much would depend on the person appointed, over which we have no control.

I do not believe we can make a token payment to the Welfare Department since any payment which would bar a later claim would have to be made with the understanding of the facts by the court.

It was not until 1967 that any Court having jurisdiction over the estate of Williams, Sr. was advised of the possibility that Williams, Sr. may have died leaving a child other than Williams, Jr. That fact surfaced in two actions then pending before the Circuit Court for Montgomery County, Alabama.

In that year, Audrey Williams, the mother of Williams, Jr. filed a petition for final settlement in the Williams, Sr. estate and a petition to vacate and for accounting and transfer in the guardianship estate of Williams, Jr. then a minor. At that time, Irene Smith was the administratrix of the Williams, Sr. estate and the Alabama guardian of Williams, Jr. in the guardianship estate. In the capacity as aforementioned, Smith filed her response to the petitions filed by Audrey Williams. It was in those answers that the question of existence of the legal rights of Stone and any other unknown heirs were first raised. In each proceeding the Court appointed Drayton N. Hamilton, Esq. to be the guardian ad litem to represent the interest of any minor person(s) who might have an interest in the matters involved in the proceedings.

The record reflects that Hamilton had previously served as guardian ad litem for Stone in proceedings relating to the estate of Williams Sr.'s mother, Lillian Stone, in 1963. It appears, however, that at that time Hamilton knew only that she was an adopted child of Lillian Stone. According to Hamilton, the first time that he became aware that Stone may possibly have been fathered by Williams, Sr. was after he had been appointed guardian ad litem in the proceedings initiated by Audrey Williams.

In 1967 and 1968 Stone lived in Mobile with her adoptive parents Mr. and Mrs. Deupree. The Deuprees knew of the pendency of the proceedings in Montgomery and had conversations with Hamilton concerning those proceedings. The record seems to establish that Stone's adoptive parents were not interested in pursuing the

matter on behalf of their daughter. Hamilton continued his representation and actively participated in all phases of the proceedings.

A trial was conducted on the merits before Honorable Richard P. Emmet of the Circuit Court of Montgomery County, Alabama. At trial Hamilton argued that Stone was the legitimate daughter of Williams, Sr. through the operation of law as applied to the October, 1952 agreement between Williams, Sr. and Jett. He posited that the agreement met the statutory requirements for legitimation in the State of Alabama. In the alternative, he challenged existing state law on constitutional grounds. In summary he argued:

> We conclude that the Court must determine that the child . . . is the natural child of Hank Williams; secondly, that the said child is the legitimate daughter of Hank Williams under Alabama law and the facts of the case; thirdly, that even if the child has not been legitimated she should share in the estate as the natural daughter of Hank Williams and lastly, that there can be but little question that this child has a present right under the Copyright Laws of the United States to share in the income from the Hank Williams compositions. . . .

The Court issued its first Order on December 1, 1967. It was in the Williams, Sr. Estate case. In the Order the court found as follows:

> The principle issue raised by the Petition . . . and by the Answer . . . is the right of Randall Williams to inherit from his father's estate as the sole beneficiary. The pleadings, the testimony, and the exhibits raise the question of the right of another child to receive a part of the assets of this estate as a natural child which has been

> legitimated (sic) under Alabama's statutory procedure. The Guardian Ad Litem has also sought a determination by the Court that this child, even if not legitimated as required by statute, is a natural child of Hiriam Hank Williams and as such has certain right under the Federal Copyright Statutes. *The Court does not believe it is necessary to make this latter determination* (emphasis added).
>
> In the opinion of the Court, there has not been sufficient compliance with the requirements of Section 11 of Title 27 of the Code of Alabama to give the child in question any right of inheritance from Hiriam Hank Williams or to receive any part of his estate. The Court is further of the opinion that under all the evidence heard and considered by the Court, Randall Williams is the sole heir and only distributee of the Estate of Hiriam Hank Williams. . . .
>
> IT IS THEREFORE, CONSIDERED, ORDERED AND DECREED by the Court:
>
> . . . .2. That Randall Williams is the sole heir of his father, Hiriam Hank Williams, and is the only beneficiary of his estate now administered by this Court.

The Order of the Circuit Court in the guardianship estate case was issued on January 30, 1968. In that order, the Court went further and made additional findings and drew additional conclusions of law relative to the status of Stone. The Court found:

> Addressing itself to the question of the child born to one Bobbie W. Jett, the Court finds from the evidence the child does not have any right in the copyrights or the renewal of those rights of the late Hiriam (Hank) Williams.

> The Court is impressed with the argument of the Guardian Ad Litem. The Court adopts the sound reasoning advanced in brief that the time is long past due when illegitimate off-spring should be afforded adequate property rights. The Common law is severe in calling such off-spring a "non-person" or a "person of no blood".
>
> However, the evidence in this case is without dispute, this off spring of one Bobbie W. Jett is not now a "person of no blood".
>
> The evidence shows the child has been . . . adopted. . . . By fiction of law only but with the same effect as if natural, the child has been infused with the blood of the adopting parents. The evidence shows the final decree of adoption occurred almost ten years ago. The evidence shows the adopting parents were fully informed by the state authorities of these proceedings. The evidence shows the adopting parents chose not to pursue any action in regard to these proceedings.
>
> . . . It is, therefore, ORDERED, ADJUDGED and DECREED by the Court as follows:
>
> . . . 2. That the child born to one Bobbie W. Jett is not an heir of the late Hiriam (Hank) Williams within the meaning of the Copyright Law.

Neither the December 1, 1967 Order in the Estate proceeding nor the January 30, 1968 Order in the Guardianship Proceedings was appealed, although the Guardian Ad Litem sought permission from the trial court to make such an appeal. Those Orders therefore became final pursuant to applicable Alabama law.

Following the death of Williams, Sr., Fred Rose Music, Inc. and Milene Music, Inc., and their predecessors in

interest paid to the estate of Williams, Sr. royalties arising from the usage of the songs composed by Williams, Sr. Following the 1967 and 1968 Orders of the Circuit Court for Montgomery County, and in reliance thereon, royalties were paid to Williams, Jr. as the sole heir of Williams, Sr.

It is interesting to note that even in the light of the Circuit Court Orders, Robert Stewart, who was appointed as the Administrator in 1969, presumably out of an abundance of caution, continued to set aside money for Stone. In a series of letters to the attorney for Williams, Jr., Stewart stated that "the last two distributions to Randall- . . . were actually an encroachment on the one-half of the Estate which could conceivably be claimed by the child." In April of 1974, Stewart advised counsel for Williams, Jr. that Stone had claimed her homestead which had been set aside for her in the Lillian Stone estate. Stewart wrote that Stone's "ancestry may well be reasonably obvious to her, and further trouble may ensue."

The Estate of Williams, Sr. would be closed in August of 1975 without further incident relative to the issue of Stone's rights, if any, to a share in said estate.

In January of 1974, Cathy Stone reached the age of majority. While attending the University of Alabama, she was informed by her adoptive mother that Williams, Sr. might be her father. Stone was also advised that the Circuit Court of Montgomery County was holding certain funds for her from the estate of Lillian Stone. Stone traveled to Montgomery and received the proceeds from the estate of her former adoptive mother. It appears from

the record that it was at about this time that Stone began to seriously seek information concerning her parentage.

From 1976 to 1979 Stone had several encounters with individuals that had knowledge surrounding her earlier years. It appears form [sic] the record that Stone had formed an opinion as to her parentage as early as the Fall of 1979. Stone continued to retrieve documents that bore on the issue throughout the period of 1979 through 1980.

On July 1, 1985 Stone filed an action in the Circuit Court of Montgomery County requesting that certain documents that had been placed under seal be released to her. On August 5, 1985 Stone wrote a demand letter to Williams Jr. and Acuff-Rose/Opryland advising them of Stone's claimed interest in Williams' copyrights. On September 12, 1985, Stone filed an action in the United States District Court for the Southern District of New York, Civil Action No. 85. Civ. 7133 JFK, relative to her alleged rights in the copyrights of musical compositions written in whole or in part by Williams, Sr.

The instant suit was commenced by the Plaintiffs on September 10, 1985 by Complaint for Declaratory Judgment and Injunctive Relief. The Complaint was amended twice with the last amendment being filed on November 14, 1985. Stone filed her Counter claim for Establishment of Paternity, Declaration of Rights and Imposition of Constructive or Resulting Trust on October 14, 1986. Her third party complaint was also filed on that date.

The issues raised by the motions for summary judgment presently before the Court are as follows:

Whether, because of her illegitimate status and her status as an adopted child, Stone is barred by applicable state law from now attempting to establish that she is an heir of the Williams, Sr. estate.

Whether, consistent with prior orders and judgments of this Court, Williams, Jr. is the sole heir of the Williams, Sr. estate and as such has exclusive rights to all proceeds generated in the past by the estate and in the future from copyrighted materials.

Whether Stone has ever been adjudicated to be a child of Williams, Sr.

Whether, based upon the facts not now in Dispute, the third party complaint states a cause of action upon which relief may be granted.

It is obvious from the record that if Stone is in fact the child of Williams, Sr. she is an illegitimate child who was subsequently twice adopted. It is also obvious from the record that Williams, Sr. died intestate. The issue that naturally arises is what rights an after-adopted illegitimate child has to assert a claim against her reputed biological father's estate.

The answer to that question within the context of this case appears to be none. The issue that inevitably follows that determination is what remedies are available to an illegitimate under Alabama law to establish paternity so as to have a bona fide claim to the proceeds of the intestate father's estate.

Presently, there are four ways in the State of Alabama to legitimate a child so that the child can inherit from an intestate father. Two of the methods require either the

marriage of the father and mother and recognition by the father of the child as his own or the filing of a formal written declaration attested by two witnesses. The third method relates to the procedure under the Alabama Uniform Parentage Act (hereinafter referred to as AUPA) which is codified in Section 26-12-1, *et. seq.*, Code of Alabama 1975 as amended. Finally, the fourth alternative is found in the Alabama Probate Code at Section 43-8-48 Code of Alabama 1975 as amended.

The Court is of the opinion that as to the Plaintiffs' claim and as to Stone's counterclaim, the above cited procedures that are presently available are the ones that shall be determinative of the issues that relate to them.

It is undisputed that neither of the first two procedures is applicable in this case. Williams, Sr. died prior to Stone's birth, he never married Stone's mother, and no formal declaration of paternity that met statutory requirements was ever filed.

The fact that Stone was twice adopted after birth acts as a bar to recovery under the AUPA, specifically Section 26-17-6-(e), supra. That section clearly provides that an adopted child may not bring an action to establish paternity under the Act.

In addition, the fact that Stone was twice adopted forecloses recovery under the Alabama Probate Code, Section 43-8-48, supra. That section clearly provides that an adopted person is the child of an adopting parent and not of the natural parents. Stone argues that the fact that she was unadopted at the time of Williams, Sr.'s death would remove her from the applicability of Section 43-8-48. The Court disagrees. At the time of Williams,

Sr.'s death there did not exist a legal relationship between Stone and Williams, Sr. that would entitle her to inherit. If that were the case, Section 43-8-48 would not even be applicable since that section becomes important only if one is attempting to establish that such a relationship does in fact exist.

Assuming arguendo that the Court determined that it should apply the law as it existed at the time of Stone's birth to the issues in this case, the Court is of the opinion that Stone would still be barred from recovery in her counterclaim. To prevail, Stone must establish the existence of a relationship between herself and Williams, Sr. that would allow her to have a valid claim against his estate. Because of the factual circumstances that exist, that becomes an impossibility irrespective of whether the Court applies existing law or the law of 1952.

The 1967 preceedings in the Circuit Court of Montgomery County involved the question of whether or not Stone was an heir of Williams, Sr. At that time, an illegitimate child could not inherit from its natural father unless the child had been legitimated. As Stone had not been lgitimated [sic], the Court held that Stone was not an heir and as a result not entitled to share in the estate. Although the law today differs from relevant applicable standards in 1967, the doctrines of res judicata and collateral estoppel nonetheless now preclude Stone's claim to a share in the William's, Sr. estate. Since the issue and claim by Stone that she is an heir and entitled to inherit was decided in the 1967 proceeding in which the parties were the same, she is thus barred from relitigating that identical issue and claim in this case.

Turning to the issue of the alleged status of Stone as the child (as opposed to legal heir) of William's Sr., it is clear from the record that there was never a judicial determination relative to the biological relationship between Stone and William's, Sr. As the Court noted in 1967, it was not necessary for the Court to make such a determination in reaching its decision at that time as it was irrelevant. Thus, res judicata and collateral estoppel do not affect that question and it remains an issue of disputed fact between the parties.

As to the third party claim filed by Stone, the Court is of the opinion that the main if not the entire thrust of the complaint revolves around an argued duty to disclose and the willful and or fraudulent failure to do so. In 1953 Stone was not an heir to the estate of Williams, Sr., and she could not have been established as such under then existing law. If the existence of Stone had been made known to the Court by any of the third party defendants, it is assumed that the Court in adjudicating her claim would have applied the law as it then existed and would therefore have ruled that her claim was at that time invalid. The only obligation or duty that could be foreseeable in a situation such as exists in this case would be a requirement that the Third Party Defendants act in good faith according to the law of the State of Alabama as it existed at that time. The Court deems it unreasonable to impose upon them the duty to anticipate or foresee what the law should or might become in the future. At the time that the alleged fraudulent concealments puportedly [sic] occurred, full disclosure to the Court or to interested third parties would have been superfluous. Therefore, the Court is of the opinion that the Third Party Complaint

does not state a cause of action for which recovery can be had.

It appears from the record and from a complete review of the proceedings in this case that the law requires that the Court enter a Partial Summary Judgment in this cause. The Court finds that there remains a justiciable issue raised in the Complaint filed by the Plaintiffs where the Court is specifically asked to declare that Williams, Jr. is the sole child of Williams, Sr. This issue as framed by the Complaint is still factually disputed and on that issue Summary Judgment is not appropriate even though it is conceded by the Court that such a determination would not affect the outcome of the other issues raised by the pleadings.

Based on the foregoing it is therefore ORDERED, ADJUDGED, AND DECREED BY THE COURT AS FOLLOWS:

The Motion for Summary Judgment filed herein by the Plaintiffs as it refers to the original Complaint is GRANTED as to all issues with the exception of whether or not the Defendant is the biological child of Williams, Sr.

The Motion for Summary Judgment filed herein by the Plaintiffs as it refers to the Counterclaim is GRANTED as to all issues.

The Motions for Summary Judgment filed by the Plaintiffs and the Third Party Defendants as they relate to the Third Party Complaint are GRANTED on all issues.

Further proceedings in this cause are hereby set on the 25th day of August, 1987 at 10:00 A.M.

DONE THIS THE 14th DAY OF JULY, 1987.

/s/ H. MARK KENNEDY
H. MARK KENNEDY
CIRCUIT JUDGE

Sterling Culpepper
David Johnson
Robert Black
James Hampton
Christian Horsnell
Richard Frank, Jr.
James E. Williams
F. Keith Adkinson
James A. Goodman/Vincent H. Chieffo
Alan Shulman
Stephen K. Rush
Thomas Levy

APPENDIX B-2

IN THE CIRCUIT COURT FOR THE
FIFTEENTH JUDICIAL CIRCUIT
MONTGOMERY COUNTY, ALABAMA

RANDALL HANK WILLIAMS, and WESLEY H. ROSE and ROY ACUFF, as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc., and Milene Music, Inc., both Tennessee Corporations,	)	CASE NO. CV-85-1316-K
PLAINTIFFS,	)	
vs.	)	
CATHERINE YVONNE STONE,	)	
DEFENDANT.	)	

FINAL ORDER

This Cause now comes before this Court for Final Disposition pursuant to previous Orders and proceedings in this matter. Before the Court at this time are all forms of evidentiary matters, the pleadings as filed and post-trial briefs that have been submitted by learned counsel.

The Court on the date of the last hearing took under advisement certain offerings of evidence. The Court will now rule on the admissibility of those items and on any and all outstanding posttrial motions before proceeding to the merits of the remaining issue.

The following exhibits have been offered into evidence, objected to, and are pending admission by the Court:

Defendant's Exhibits 1, 5, 13, 14, 16, 17, 33, 35 & 41.

Upon review of the exhibits as outlined above, the Court does hereby sustain the objections to proffered exhibits nos. 1, 5, 13, 14, 16 and 17.

Upon review of the exhibits as outlined above, the Court does hereby overrule the objections to proffered exhibits nos. 33, 35 and 41 and the same are hereby admitted into evidence.

On October 7, 1987 Defendant filed a Motion to Strike the Posttrial Brief of Plaintiff. That Motion is Denied.

Plaintiffs throughout these proceedings, subsequent to this Court's Order on Motions for Summary Judgment, have objected to this Court's proceeding forward and have excepted to the Court's interpretation of the state of the pleadings. Regardless of whether the question is framed as, is the Defendant the natural daughter of Williams, Sr., or is Williams, Jr. the only natural child, the Court reiterates that the issue that remains before the Court is the biological status of Defendant Stone. The Court is of the opinion that that issue was raised by the Plaintiffs in the original Complaint, was joined by the Defendant, and now is a legitimate, justiciable issue.

In lieu of making additional findings of fact, the Court adopts the findings as stated in the previous Orders of this Court. Based upon those findings and the additional evidence as submitted at the hearing of September 2, 1987, the Court is of the Opinion that it continues to have jurisdiction over the parties and of the subject matter and does hereby enter the following Final Order.

The Court upon consideration of the evidence does hereby find that Hank Williams, Jr. is not in fact the only natural child of Hank Willimas [sic], Sr. in that Defendant Catherine Yvonne Stone is also a natural child of Hank Williams, Sr.

DONE THIS THE 26TH DAY OF OCTOBER, 1987

/s/ H. Mark Kennedy
H. MARK KENNEDY
CIRCUIT JUDGE

Honorable Sterling Culpepper
Honorable David Johnson

APPENDIX C-1

Stone v. Gulf American Fire & Cas. Co., et al.

On Application for Rehearing

(Released Nov. 9, 1989)

MADDOX, JUSTICE.

Both Irene Smith and Jones, Murray and Stewart, P.C., have asked this Court to clarify its original opinion and to state that the summary judgments granted to them insofar as they denied Stone's request for damages against them are affirmed. Stone has again requested (1) that this Court reverse the trial court's summary judgment on her fraud claims against third-party defendants Smith and Jones, Murray and Stewart, and (2) that this Court modify its opinion to allow her to share in the estate of Hank Williams, Sr., from the date of his death in 1953, rather than from the date on which she made a demand on Hank Williams, Jr., in 1985.

In a brief styled "Petition of Randall Hank Williams for Leave to Appear for Purpose of Seeking to Vacate and Modify Opinion of July 5, 1989 and for Stay of Issuance of Certificate of Judgment Pending Further Proceedings," Williams, Jr., asks this Court to vacate and modify its original opinion on the ground that he was not a party to the appeal, and, therefore, that his due process rights were violated. Williams, Jr., argues that because Stone appealed only from the summary judgment granted on her third-party claim, she is barred by the doctrine of *res judicata*, because she did not appeal the summary judgment granted to him on his claim that she was not an

"heir." In short, Williams, Jr., claims that even though Stone has shown that she is the natural child of Hank Williams, Sr., and even if that determination in her favor was not appealed by him, she is now barred from inheriting because she did not appeal the adverse determination by the trial court that she was not an "heir," even though she has been judicially determined to be a natural child.

As set forth in the our [sic] original opinion, Williams, Jr., initiated this action by filing a declaratory judgment action seeking a declaration that Stone had no entitlement to Hank Williams's estate. Stone filed a counterclaim against Williams, Jr., and alleged that she was the natural daughter of Williams, Sr. Williams, Jr., joined issue on that claim.

Stone later filed a third-party complaint against Smith; Jones, Murray and Stewart, P.C.; and several fictitiously named parties, asking that the estate be reopened; she also asked for compensatory and punitive damages against third-party defendants Smith and Jones, Murray and Stewart, P.C. Gulf American Fire & Casualty Company and American States Insurance Company were also named as third-party defendants. The trial court entered a "Partial Summary Judgment" for Williams, Jr., on his complaint and entered a "Partial Summary Judgment" against Stone on her counterclaim and on her third-party complaint, finding "that there remains a justiciable issue raised in the Complaint filed by the Plaintiffs where the Court is specifically asked to declare that Williams, Jr. is the sole child of Williams, Sr. . . . [and that] [t]his issue as framed by the Complaint is still factually disputed and on that issue Summary Judgment is not appropriate even

though it is conceded by the Court that such a determination would not affect the outcome of the other issues raised by the pleadings."

As the trial court stated in its order on October 26, 1987, Williams, Jr., throughout the proceedings, subsequent to the time when the court entered its "Partial Summary Judgment" on July 14, 1987, objected to the trial court's proceeding forward to determine Stone's paternity, and excepted to the Court's interpretation of the pleadings.[1]

---

[1] For a better understanding of the legal effect of the trial court's grant of "Partial Summary Judgment" and the continuance of the case for a determination of Stone's paternity, over the objection of Williams, Jr., we set out portions of the trial court's orders:

> "The instant suit was commenced by the Plaintiffs on September 10, 1985 by Complaint for Declaratory Judgment and Injunctive Relief. The Complaint was amended twice with the last amendment being filed on November 14, 1985. Stone filed her Counterclaim for Establishment of Paternity, Declaration of Rights and Imposition of Constructive or Resulting Trust on October 14, 1986. Her third party complaint was also filed on that date.
>
> "The issues raised by the motions for summary judgment presently before this Court are as follows:
>
> "Whether, because of her illegitimate status and her status as an adopted child, Stone is barred by applicable state law from now attempting to establish that she is an heir of the Williams, Sr. estate.
>
> "Whether Stone has ever been adjudicated to be a child of Hank Williams, Sr.

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"Whether, based upon the facts not now in dispute, the third party complaint states a cause of action upon which relief may be granted.

"* * * *

"Turning to the issue of the alleged status of Stone as the child (as opposed to legal heir) of Williams, Sr., it is clear from the record that there was never a judicial determination relative to the biological relationship between Stone and Williams, Sr. As the Court noted in 1967, it was not necessary for the Court to make such a determination in reaching its decision at that time as it was irrelevant. Thus, res judicata and collateral estoppel do not affect that question and it remains an issue of disputed fact between the parties.

"As to the third party claim filed by Stone, the Court is of the opinion that the main if not the entire thrust of the complaint revolves around an argued duty to disclose and the willful or fraudulent failure to do so. In 1953 Stone was not an heir to the estate of Williams, Sr., and she could not have been established as such under then existing law. If the existence of Stone had been made known to the Court by any of the third party defendants, it is assumed that the Court in adjudicating her claim would have applied the law as it then existed and would therefore have ruled that her claim was at that time invalid. The only obligation or duty that could be foreseeable in a situation such as exists in this case would be a requirement that the Third Party Defendants act in good faith according to the law of the State of Alabama as it existed at that time. The Court deems it unreasonable to impose upon them the duty to anticipate or foresee what the law should or might become in the future. At the time that the alleged

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fraudulent concealment purportedly occurred, a full disclosure to the Court or to interested third parties would have been superfluous. Therefore, the Court is of the opinion that the Third Party Complaint does not state a cause of action for which recovery can be had.

"It appears from the record and from a complete review of the proceedings in this case that the law requires that the Court enter a Partial Summary Judgment in this cause. The Court finds that there remains a justiciable issue raised in the Complaint filed by the Plaintiffs where the Court is specifically asked to declare that Williams, Jr. is the sole child of Williams, Sr. This issue as framed by the Complaint is still factually disputed and on that issue Summary Judgment is not appropriate even though it is conceded by the Court that such a determination would not affect the outcome of the other issues raised by the pleadings.

"Based on the foregoing it is therefore ORDERED, ADJUDGED, AND DECREED BY THE COURT AS FOLLOWS:

"The Motion for Summary Judgment filed herein by the Plaintiffs as it refers to the original Complaint is GRANTED as to all issues with the exception of whether or not the Defendant is the biological child of Williams, Sr.

"The Motion for Summary Judgment filed herein by the Plaintiffs as it refers to the Counterclaim is granted as to all issues.

"The Motions for Summary Judgment filed by the Plaintiffs and the Third Party Defendants as they relate to the Third Party Complaint are GRANTED on all issues.

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"Further proceedings in this cause are hereby set on the 25th day of August, 1987 at 10:00 a.m.

"DONE THIS THE 14TH DAY OF JULY, 1987.
"s/H. MARK KENNEDY
"CIRCUIT JUDGE"

On October 26, 1987, the trial judge entered a final judgment in the case, which held inter alia:

"Plaintiffs throughout these proceedings, subsequent to this Court's Order on Motions for Summary Judgment, have objected to this Court's proceeding forward and have excepted to the Court's interpretation of the state of the pleadings. Regardless of whether the question is framed as, is the Defendant the natural daughter of Williams, Sr., or is Williams, Jr. the only natural child, the court reiterates that the issue that remains before the court is the biological status of Defendant Stone. The court is of the opinion that that issue was raised by the Plaintiffs in the original Complaint, was joined by the Defendant, and now is a legitimate, justiciable issue.

"In lieu of making additional findings of fact, the Court adopts the findings as stated in the previous Orders of this Court. Based upon those findings and the additional evidence as submitted at the hearing of September 2, 1987, the court is of the opinion that it continues to have jurisdiction over the parties and of the subject matter and does hereby enter the Final Order.

"The Court upon consideration of the evidence does hereby find that Hank Williams, Jr. is not in fact the only natural child of Hank Williams, Sr. in that Defendant Catherine Yvonne Stone is also a natural child of Hank Williams, Sr."

Stone admittedly did not appeal the entry of the "Partial Summary Judgment"[2] entered in favor of Williams, Jr., on his complaint, and on Stone's counterclaim on July 14, 1987, likewise, Williams, Jr., did not appeal the adverse ruling that Stone was the natural child of Hank Williams, Sr., that was entered on October 26, 1987. Naturally, Stone did not appeal from the October 26, 1987, determination that she was the natural child of Williams, Sr., because it was favorable to her.

It is clear that the doctrine of *res judicata* does not apply in this situation, because that doctrine prohibits the *relitigation* of all matters that were or could have been litigated in a *prior* action. *Century 21 Preferred Properties, Inc. v. Alabama Real Estate Comm'n*, 401 So. 2d 764, 768 (Ala. 1981). Here, the complaint of Williams, Jr., and Stone's counterclaim and third-party complaint were litigated together.

As the trial court found, the main thrust of Stone's third-party claim involved "an argued duty to disclose and the willful or fraudulent failure to do so." This Court, in its original opinion, found that there was a duty, that there was a breach of that duty, and that Stone was entitled to have the estate reopened, but was not entitled to any damages against the third-party defendants. Williams, Jr., in his petition before us, claims that Stone's third-party complaint was only for *indemnification* and that "Stone's request in her third-party complaint to reopen the estate was simply meaningless surplusage." We

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[2] In his petition before us, Williams, Jr., notes that the "Partial Summary Judgment" was "interlocutory and not subject to immediate appeal." See Rule 54(b), Ala. R. Civ. P.

cannot agree. On original deliverance, we considered whether summary judgment was appropriate on this third-party complaint, which contained claims that were both in personam and in rem. Although we did not elaborate on the issue, we necessarily determined that Stone's request to have the estate reopened was an action in rem.[3] Additionally, this Court, on another appeal in this case, treated the original declaratory judgment action filed by Williams, Jr., as one filed pursuant to the provisions of Ala. Code 1975, § 6-6-225. In *Ex parte Stone*, 502 So. 2d 683 (Ala. 1986), this Court stated the following concerning the nature of the underlying declaratory judgment action:

> "Further support for the trial court's refusal to dismiss the Williams Group's complaint can be found in *Code of Alabama, 1975*, § 6-6-220, *et seq.*, the Declaratory Judgment Act. Specifically, § 6-6-225 provides:
>
> > " 'Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin or cestui que trust in the administration of a trust or of the

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[3] In 1A C.J.S. *Actions* § 4 (1985), pp. 309-10, it is said:

> "As its name implies, an action in rem is an action or proceeding against a 'thing' or property, instead of a person; a proceeding to determine the state or condition of the thing itself; a judicial proceeding against the thing itself, which terminating in a valid judgment binds all the world. It has been said, however, that an action or proceeding in rem is difficult to define with accurate completeness, its exact nature being best understood by reference to its essential features."

> estate of a decedent, infant, incompetent or insolvent may have a declaration of rights or legal relations in respect thereto:
>
> " '(1) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or other;
>
> " '(2) To direct the executors, administrators or trustees to do or abstain from doing any particular act in their fiduciary capacity; or
>
> " '(3) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.'
>
> "The instant dispute plainly falls within the scope of this statute, and the declaratory judgment action filed by the Williams Group is thus a viable means of settling this dispute."

502 So. 2d at 686.

Stone's claim in her third-party complaint, in which she seeks to reopen the estate, is not essentially different from the prayer of Williams, Jr., for relief in his declaratory judgment action, wherein he specifically asked:

> "That in the event this Court *alters, modifies or otherwise changes the prior Orders and Judgments* in Civil Action Nos. 25,056 and 27,960 that this Court proceed to adjudicate and determine the rights of the parties hereto with regard to the Estate of Hiriam Hank Williams and the copyright and renewal copyright renewal copyright [sic] interests of the musical compositions of Hiriam 'Hank' Williams."

To apply the principles of *res judicata* or of collateral estoppel in this case would be most inequitable, and

would violate the spirit of both Rule 1, A.R.Civ.P. and Rule 1, A.R.App.P., and would elevate form over substance. It is clear that both the complaint of Williams, Jr., and Stone's third-party complaint asked for a determination of Stone's right to share in the estate. As we indicated in our original opinion, the claims of the various parties in this case are so intertwined and the factual situation is so unique that notions of fairness require that the entire controversy be settled in one proceeding.[4] See *City of Tuscaloosa v. Fair*, 232 Ala. 129, 167 So. 276 (1936), overruled in part on other grounds by *Jacks v. City of Birmingham*, 268 Ala. 138, 105 So. 2d 121 (1958). Stone did indeed appeal a judgment that held that she was not entitled to have the estate reopened. She convinced this Court that the record in this case showed that she was, in fact, entitled to have the estate reopened. To say that she was barred from raising her claims on that appeal because she did not also appeal a simultaneous judgment with the same holding would be unfair under *City of Tuscaloosa v. Fair* and the spirit of the Alabama Rules of Civil Procedure.[5]

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[4] It is perfectly clear that the judgment of the trial court on the declaratory judgment action and on the third-party complaint was premised upon an erroneous determination by the trial court that even if Stone was a natural child of Williams, Sr., she was not an "heir."

[5] The July 14, 1987, judgment of the trial court adjudicated all claims of the parties except Stone's claim that she was a natural child of Williams, Sr. Williams, Jr., strongly resisted the trial court's jurisdiction to make the subsequent finding. Also, it should be remembered that the trial court granted the third parties' motion for a *summary judgment*, and although the

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Even though we hold that the third-party action seeking to reopen the estate was in rem and that Williams, Jr., essentially asked for the same relief in the original declaratory judgment action that Stone requested in her third-party complaint, we, nevertheless, have carefully considered the argument of Williams, Jr., that, because Stone did not appeal the summary judgment entered in favor of him on his declaratory judgment complaint, this Court should not have determined, on this appeal, whether Stone was entitled to have the estate reopened and to share in the estate because he was not a party to the appeal.

This Court, on original submission, carefully considered whether it should allow this estate to be reopened. The dissenting Justices were of the opinion that we should not permit it to be reopened. On original deliverance, we noted "throughout [the] opinion the unique character of this case," and that "[i]n fashioning an appropriate remedy, we [took] these peculiar circumstances into consideration."

Although the judgments appealed from were summary judgments, there was voluminous evidence presented, much of which we took into consideration in fashioning

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judgment was not specifically made final and appealable pursuant to the provisions of Rule 54(b), Ala.R.Civ.P. (it was denominated a "Partial Summary Judgment" by the trial court), it would not be in keeping with the spirit of the Alabama Rules of Civil Procedure to hold that Stone would now be precluded from sharing in the estate, especially when Williams, Jr., specifically asked that Stone's claim be adjudicated pursuant to Ala. Code 1975, § 6-6-225.

our order on original deliverance. The basic facts upon which our legal determination was made were not disputed; therefore, we were presented with questions of law, considering those admitted facts. As the original opinion shows, this Court carefully considered the rights of individuals, including petitioner Williams, Jr., who had relied upon the prior decrees that this Court held were due to be set aside, and our judgment was not unanimous; there were dissenting views.

On application for rehearing, we have carefully considered Stone's argument that we should allow the estate to be reopened from the beginning, and we have considered very closely the argument of Williams, Jr., that we should not let Stone share at all, even though she has been judicially declared to be the natural daughter of Williams, Sr. We believe we reached a just and equitable result on original deliverance, and we are of the opinion that the petition of Williams, Jr., for leave to appear for the purpose of seeking to vacate and modify this Court's July 5, 1989, opinion is due to be denied. In reaching this conclusion, we apply the statutory principle in Code, 1975 § 12-22-70, which is merely declaratory of an appellate court's power, that "[t]he appellate court may, upon the reversal of any judgment or decree, remand the same for further proceedings or enter such judgment or decree as the court below should have entered or rendered, when the record enables it to do so." The record in this case allows us to do that, because the facts of the case have been fully developed in this record, and the evidence is either undisputed or without material conflict. In such a case, the general rule particularly applicable as

stated in 5B C.J.S. Appeal and Error § 1925 (1958), pages 425-27:

> "The general rule that the appellate court may, on reversal, render or direct final judgment is particularly applicable where the facts of the case have been fully developed on the trial, and there is nothing on which the party against whom reversal was made could strengthen his case or ground further proceedings, and it appears from the record that the evidence on another trial would be substantially unchanged."

Because we are of the opinion that Stone is not precluded by *res judicata* or collateral estoppel from having the estate reopened and because we believe that, based on the facts of this case, which were fully developed in this record and on the further fact that the position advanced by Williams, Jr., that Stone was not an "heir" was adequately presented by other parties on this appeal, and based on this Court's independent consideration of his position in view of the in rem nature of the proceeding, we cannot see how Williams, Jr., could strengthen his position on the law of this case. In fact, since original deliverance, we have located another case which appears to support the result we reached. The Supreme Court of Mississippi recently stated in *Collier v. Shell Oil Co., 534 So.*, 2d 1015, 1017 (Miss. 1988): "One who has acquired title by operation of law under prior interpretation of the law regulating descent and distribution must yield to a subsequent change of interpretation." See also *Reed v. Campbell*, 476 U.S. 852 (1986) (*Trimble v. Gordon*, 430 U.S. 762 (1978), can be applied retroactively).

Based on the foregoing, we deny the petition of Randall Hank Williams, Jr., and we overrule the application

for rehearing filed by Stone, and we affirm the entries of summary judgment for Smith and Jones, Murray, and Stewart, P.C., on Stone's claim for fraud.

PETITION OF RANDALL HANK WILLIAMS, JR., DENIED; APPLICATION FOR REHEARING BY STONE OVERRULED; OPINION EXTENDED; AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

Jones, Adams, and Steagall, JJ., concur. Almon and Shores, JJ., dissent.

Hornsby, C.J., and Houston, and Kennedy, JJ., recused.

Catherine Yvonne Stone v. Gulf American Fire & Casualty Co., et al.

SHORES, JUSTICE (dissenting).

The majority excuses its disregard of the law by calling this a unique case, but it cannot escape the fact that Williams, Jr., won the controversy between him and Stone in the court below and that Stone did not appeal that judgment. That judgment became final, and it decided the issue of whether Stone could share in the estate of Hank Williams, Sr. As the *Restatement (Second) of Judgments* § 33 (1982) states:

> "A valid and final judgment in an action brought to declare rights or other legal relations of the parties is conclusive in a subsequent action between them as to the matters declared, and, in accordance with the rules of issue preclusion, as to any issues actually litigated by them and determined in the action."

Stone appealed a judgment entered in her impleader action against certain other third parties. Williams, Jr.,

was not before this Court. Yet this Court has decided that Williams, Jr., now loses the case between him and Stone and by doing so refuses to follow all of the applicable substantive law pertinent to the issues and now disregards the procedural rules as well. If this case were not so unique, the issues between Williams, Jr., and Stone that were decided by a court of general jurisdiction in favor of Williams, Jr., would be settled forever because they are *res judicata*. As Professor Moore has written:

> "If an appeal is taken from only part of the judgment, the remaining part is res judicata, and the vacation of the portion appealed from and remand of the case for further proceedings does not revive the trial court jurisdiction of the unappealed portion of the judgment."

1B J. Moore, *Moore's Federal Practice* ¶0.404 (2d ed. 1988).

I think the Court's action violates the constitution of this state and the Constitution of the United States in that it directly affects property rights of Williams, Jr., that were vested, if not at the time the estate of Williams, Sr., was finally closed, then surely by the entry of final judgment in his favor in his declaratory judgment action, which this Court held was the proper way to finally determine whether Stone had an interest in the estate. As Professor Moore has said in commenting upon the failure of a court to give *res judicata* effect to binding prior orders:

> "The due process clause of the Fourteenth Amendment should preclude a state from subsequently restricting or refusing effect to one of its judgments as res judicata beyond a certain point. The reasons for this conclusion are: judicial rights were vested by the judgment; they

> may be divested by the usual judicial remedies of direct attack, and remedies to enjoin or otherwise obtain relief from the judgment; just as a party may not arbitrarily be bound by a judgment, so he may not arbitrarily be deprived of his rights under a valid judgment. And a state constitutional due process provision would similarly act as a check upon state power to deprive a party unjustly of vested rights in a judgment rendered by the state court."

1B J. Moore, *Moore's Federal Practice* ¶0.406 (2d ed 1988).

It has often been said that hard cases make bad law. This case demonstrates that unique facts can result in a disregard for all law.

Almon, J., concurs.

APPENDIX D-1

U.S. Constitution, Amendment 5

AMENDMENT 5

Criminal actions – Provisions concerning – Due process of Law and just compensation clauses. – No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment by a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment 14, Section 1

AMENDMENT 14

§ 1. **Citizenship – Due process of law – Equal Protection.** – All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 26-11-1, Code of Alabama (1975), as amended

§ 26-11-1. Legitimation by marriage of parents and recognition of child by father.

The marriage of the mother and reputed father of a bastard child renders it legitimate if the child is recognized by the father as his child. (Code 1852, § 2008; Code 1867, § 2404; Code 1876, § 2742; Code 1886, § 2364; Code 1896, § 364; Code 1907, § 5199; Code 1923, § 9299; Code 1940, T. 27, § 10.)

Section 26-11-2, Code of Alabama (1975), as amended

§ 26-11-2. Legitimation by written declaration of father; certification minutes of court to bureau of vital statistics, etc.

The father of a bastard child may legitimate it and render it capable of inheriting his estate by making a declaration in writing, attested by two witnesses, setting forth the name of the child proposed to be legitimated, its sex, supposed age and the name of the mother and that he thereby recognizes it as his child and capable of inheriting his estate, real and personal, as if born in wedlock. The declaration being acknowledged by the maker before the judge of probate of the county of his residence or its execution proved by the attesting witnesses, filed in the office of the judge of probate and recorded on the minutes of his court has the effect to legitimate such child. A certified copy of the minutes of the court shall be sent by the judge of probate to the bureau of vital statistics, state board of health and to the registrar of vital statistics of the county within 30 days after the minutes are recorded. (Code 1852, § 2009; Code 1867, § 2405; Code 1876, § 2743; Code 1886, § 2365; Code 1896, § 365; Code 1907, § 5200; Code 1923, § 9300; Code 1940, T. 27 § 11; Acts

1959, No. 640, p. 1555; Acts 1961, No. 802, p. 1165; Acts 1961, Ex. Sess., No. 175, p. 2136.)

Section 26-17-6, Code of Alabama (1975), as amended

§ 26-17-6. Action to determine father and child relationship; who may bring action; when action may be brought; stay until birth; adopted children.

(a) A child, a child's natural mother, or a man presumed to be its father under subdivision (1), (2), or (3) of section 26-17-5(a), may bring an action within five years of the birth of said child for the purpose of declaring the existence of the father and child relationship presumed under subdivision (1), (2), or (3) of section 26-17-5(a); or

(b) Any interested party may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship presumed under subdivision (4) or (5) of section 26-17-5(a).

(c) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under section 26-17-5 may be brought by the child, the mother, or personal representative of the child, the public authority chargeable by law with support of the child, the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

(d) If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.

(e) If the child has been adopted, an action may not be brought. (Acts 1984, No. 84-244, p. 375, § 6).

Section 43-8-48, Code of Alabama (1975), as amended

§ 43-8-48. Parent and child relationship.

If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

(1) An adopted person is the child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent has no effect on the right of the child to inherit from or through either natural parent;

(2) In cases not covered by subdivision (1) of this section, a person born out of wedlock is a child of the mother. That person is also a child of the father, if:

a. The natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or

b. The paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof, but the paternity established under this paragraph is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his, and has not refused to support the child. (Acts 1982, No. 82-399, § 2-109).

APPENDIX E-1

SUPREME COURT OF THE UNITED STATES

No. A-529

Randall Hank Williams,

Petitioner

v.

Catherine Yvonne Stone

ORDER

UPON CONSIDERATION of the application of counsel for the petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including March 30, 1990.

/s/ Byron R. White
Associate Justice of the
Supreme Court of the
United States

Dated this 25th
day of January, 1990.

APPENDIX F-1

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

RANDALL HANK WILLIAMS, and WESLEY H. ROSE and ROY ACUFF, as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc. and Milene Music, Inc., both Tennessee Corporations,	)	Case No. CV-85-1316
Plaintiffs,	)	
v.	)	
CATHERINE YVONNE STONE,	)	
Defendant.	)	

SECOND AMENDED COMPLAINT

Come now Plaintiffs Randall Hank Williams, Wesley H. Rose and Roy Acuff, etc., and, pursuant to Rule 15(a), Alabama Rules of Civil Procedure, file this Second Amended Complaint, which replaces and supercedes the Complaint and Amended Complaint heretofore filed in Civil Action No. 85-1316. The Plaintiffs respectfully show unto the Court as follows:

1. This is an action for a declaratory judgment seeking to have the Court declare that the orders and judgments of this Court in the actions styled *In The Matter of the Estate of Hiriam "Hank" Williams*, Circuit Court of Montgomery County, Alabama, In Equity, Case No. 25,056 and *In the Matter of the Guardianship Estate of Randall Hank Williams, a minor*, Circuit Court of Montgomery County, Alabama, In Equity, Case No. 27,960 are final and binding upon Defendant Catherine Yvonne Stone, and to

declare that Defendant Catherine Yvonne Stone has no right or entitlement to (1) the proceeds of the Estate of Hiriam "Hank" Williams, or (2) the copyright interests and any royalties or other remuneration flowing therefrom in any and all songs and other copyrighted musical compositions of Hiriam "Hank" Williams. This action is brought pursuant to Section 6-6-220, *et seq.* of the *Code of Alabama* (1975).

2. Randall Hank Williams is a resident of the State of Alabama and is the sole heir and distributee of the Estate of Hiriam "Hank" Williams, deceased.

3. Wesley H. Rose and Roy Acuff are the Trustees in Liquidation for Stockholders of Fred Rose Music, Inc., and Milene Music, Inc., Tennessee corporations which heretofore acquired rights in musical compositions and works written and/or composed by Hiriam "Hank" Williams.

4. Catherine Yvonne Stone is an individual, current residence unknown, who claims to be an illegitimate daughter of Hiriam "Hank" Williams. She is believed to be the natural daughter of one Bobbie W. Jett, and is the legally adopted daughter of Mr. and Mrs. George Wayne Deupree.

5. Hiriam "Hank" Williams, who died intestate, was a resident of the State of Alabama at the time of his death on January 1, 1953, and his estate was probated in Montgomery County, Alabama. Plaintiff Williams is the natural child and heir of Hiriam "Hank" Williams, and is the

same individual whose guardianship estate was the subject of Case No. 27,960 in the Circuit Court of Montgomery County, Alabama, in Equity, styled *In the Matter of the Guardianship Estate of Randall Hank Williams, a minor.*

6. In Case No. 25,056, in the Circuit Court for Montgomery County, Alabama, In Equity, styled *In the Matter of the Estate of Hiriam "Hank" Williams, Deceased,* this Court decided various matters relating to the Estate of Hiriam "Hank" Williams.

7. In Case No. 25,056, this Court appointed a guardian ad litem to represent the interests of any non-represented minor person or persons having an interest in or claim to the estate of Hiriam "Hank" Williams. Notice of the proceedings was given to the adoptive parents of Defendant Stone.

8. In Case No. 27,960, this Court heard and decided certain issues relating to, among other things, contractual rights and copyright renewal rights in certain songs composed by Hiriam "Hank" Williams, as more fully described in paragraph thirteen (13), below. As part of those proceedings, this Court appointed a guardian ad litem to represent the interests of any non-represented minor person or persons who might have an interest in the matters involved in the litigation. Notice of these proceedings was given to the adoptive parents of Defendant Stone.

9. In compliance with his obligation in both Case No. 25,056 and Case No. 27,960, the guardian ad litem asserted that a minor child was born to one Bobbie W. Jett on or about January 6, 1953, further asserting that said child was the daughter of Hiriam "Hank" Williams, and was therefore entitled to share equally in the estate of her

alleged father and in the proceeds of contractual and copyright arrangements regarding his music and songs. The guardian ad litem participated fully in the proceedings in both cases before this Court and fully and adequately represented the interests of the said minor child, who is the same person as the Defendant in this matter. The adoptive parents of the Defendant were present and participated in the proceedings before this Court in the cases described above, in matters relevant to the claims and rights of Catherine Yvonne Stone.

10. On December 1, 1967, this Court issued an order in Case No. 25,056, finding and concluding that the alleged minor child of Hiriam "Hank" Williams, the same person as Defendant herein, had no right of inheritance from Williams and no right to receive any part of his estate. This Court went on to find that the movant, Randall Hank Williams, was the sole heir and only distributee of the Estate of Hiriam "Hank" Williams. Said estate ultimately passed under Alabama's laws of descent and distribution to said heir.

11. On January 30, 1968, after lengthy evidentiary proceedings, this Court entered an order in Case No. 27,960 which, among other things, found and concluded that the minor child born of Bobbie W. Jett, the same person as the Defendant herein, was not an heir of Hiriam "Hank" Williams and had no rights in the copyrights or in the rights to renew those copyrights.

12. From and after the death of Hiriam "Hank" Williams, Fred Rose Music, Inc. and Milene Music, Inc., and their predecessors in interest, accounted to and paid to the Estate of Hiriam "Hank" Williams, royalties arising

from the usages of the songs composed by Hiriam "Hank" Williams. After the closing of said estate, and in reliance on the orders of this Court, to which reference is made above, Fred Rose Music, Inc. and Milene Music, Inc. paid such royalties to Randall Hank Williams as the sole heir of the estate of his father.

13. In 1963 Irene Smith, then guardian for Randall Hank Williams, at the time a minor, and Fred Rose Music, Inc. entered into a contract and agreement with regard to the renewal rights of copyright in all the musical compositions written and/or composed by Hiriam "Hank" Williams.

14. As previously noted in paragraph eight (8), above, this Court, in the case styled, *In the Matter of the Guardianship Estate of Randall Hank Williams, a minor,* Case No. 27,960, In Equity, found that the contract entered into in 1963 was in the best interests of the ward, Randall Hank Williams, and further that Hiriam Hank Williams' sole heir and distributee, Randall Hank Williams, was the only heir having an interest in the renewal rights for the copyrighted musical compositions and works of Hiriam "Hank" Williams.

15. Plaintiffs Acuff and Rose, in their capacities described above, are the successors-in-interest to Fred Rose Music, Inc., which was a necessary party in Case 27,960 due to the controversy over its contract with the guardianship estate, as described in the preceeding [sic] paragraph.

16. After Randall Hank Williams attained the age of majority, he continued to maintain the same, or similar, contractual relationship with Fred Rose Music, Inc.,

which continues to have an interest in the Hiriam "Hank" Williams copyrights, as more fully described in paragraph twenty-one (22) below.

17. Presently, Defendant Catherine Yvonne Stone openly and publicly contends that she is the natural daughter of Hiriam "Hank" Williams and, as such, is entitled to an interest in the copyrights existing at the time of Williams' death, and/or in Williams' estate. Defendant has, through counsel, made formal written demand upon Plaintiffs for an accounting of sums claimed due her with respect to the renewal copyright interest in the Hiriam "Hank" Williams compositions. On numerous occasions, personally and through her attorneys, she has announced her intention to pursue her claims in an effort to establish her alleged rights. In furtherance thereof, she has filed in this Court Civil Action No. 85-1007-PH to secure documents from the sealed files of this Court, in Cases 25,056 and 27,960, which are acknowledged to be sought for use in her pursuit of those claims, all of which are contrary to the prior orders of this Court.

18. On August 5, 1985, counsel for Defendant Stone sent letters to Randall Hank Williams and Fred Rose Music, Inc., copies of which are attached hereto as Exhibits A and B, respectively.

19. In the letters, Exhibits A and B, Defendant Stone claimed to be Hiriam "Hank" Williams' daughter and further claimed an interest in the renewal copyrights of the musical compositions of Hiriam "Hank" Williams. She also claimed unspecified sums as due and owing for the previous exercise of rights in copyrights of Hiriam

"Hank" Williams' musical compositions. Finally the letters stated that if the demands contained therein were not met, litigation would be commenced in an effort to secure her claims.

20. In addition to the demands made in the letters to Randall Hank Williams and Fred Rose Music, Inc., Defendant Stone has appeared on national television on NBC's "The Today Show" on or about August 28, 1985, wherein she stated that suit would be commenced "within two to three weeks" on her behalf.

21. Defendant Stone has granted numerous interviews to various news publications wherein she has reiterated her intention to commence litigation to enforce her claims of entitlement not only to the copyright renewal rights, but also to property interests derived from the Estate of Hiriam "Hank" Williams.

22. Fred Rose Music, Inc., has conveyed its interest in the copyrights to Acuff-Rose-Opryland Music, Inc. and has warranted title to the copyrights. Because of the numerous statements and claims made by Defendant Stone, Acuff-Rose-Opryland Music, Inc., has notified Randall Hank Williams of its intention to cease paying royalties and to withhold all such funds pending the resolution and adjudication of Defendant Stone's claims.

23. Civil Action 85-1007-PH, including the original Petition for Mandamus and the ancillary Motion to Order Production of Certain Documents, is simply part of an overall effort by Defendant Stone to relitigate matters previously and finally decided by this Court in Cases 25,056 and 27,960, and an effort by Defendant to avoid and frustrate the jurisdiction and prior orders of this

Court by resort to the courts of some foreign jurisdiction which has no logical connection or nexus with the matters placed in controversy by the Defendant's public statements.

24. The matters and things presently being alleged by the Defendant have already been litigated and decided by this Court in actions to which Defendant, through her guardian ad litem, was a party, namely Cases No. 25,056 and 27,960.

25. Since the final orders of this Court in Cases 25,056 and 27,960, Movants Williams, Rose and Acuff, the latter two in their capacity aforesaid, have relied on those orders in the conduct of their business relative to the copyrights and estate in question, believing and proceeding on the basis that this Court's orders finally and unequivocally established that Defendant Stone had no rights in or to the copyrights and estate in question.

26. By the statements and conduct described in paragraphs (17) through (21), above, Defendant Stone has willfully and recklessly interfered with Plaintiffs' contractual and business relationships, to the detriment and damage of the Plaintiffs. More particularly, Defendant Stone's public assertion that she is the natural daughter of Hiriam "Hank" Williams, and the various claims made by her predicated on that assertion, are without factual and legal support, and thus recklessly made, in that:

(a) Defendant Stone has been finally adjudicated by binding orders of this Court to have no interest whatsoever in the estate of Hiriam "Hank" Williams;

(b) Defendant Stone has never been adjudicated a child of Hiriam "Hank" Williams, nor has she otherwise supported her unfounded claims that she is a child of Williams;

(c) Defendant Stone has failed to avail herself of the procedures set forth in *Code of Alabama* (1975) Sections 26-17-1, *et seq.*, or any procedures provided by any previously-applicable Alabama law, to establish that she is a child of Hiriam "Hank" Williams;

(d) Defendant Stone is, in any event, barred by Alabama law from any attempt now to establish that she is the child of Hiriam "Hank" Williams, in that Section 26-17-6(e) of the *Code of Alabama* (1975) prohibits adopted children from asserting such claims; and

(e) Defendant Stone is also barred from any attempt now to establish that she is the child of Hiriam "Hank" Williams by various legal and equitable principles and doctrines including, but not necessarily limited to, statutes of limitations, waiver, laches, estoppel, res judicata and collateral estoppel.

27. A controversy of a justiciable nature has arisen between the parties to this action in that:

(a) Plaintiff Randall Hank Williams has been adjudicated by this Court to be the sole heir of Hiriam "Hank" Williams, and thus the sole person with rights in and to the Estate of Hiriam "Hank" Williams. Pursuant to, and in reliance on, that adjudication, Plaintiff Randall Hank Williams has used and enjoyed the properties, rights and privileges passing to him under said estate, and has contracted with third parties with respect thereto. By agreement with

Plaintiff Randall Hank Williams, judicially approved by an order of this Court, Plaintiffs Wesley H. Rose and Roy Acuff, in their aforementioned capacity, have been entitled to exercise certain rights with respect to the musical compositions and other properties of Hiriam "Hank" Williams, have heretofore been receiving and disbursing royalties in connection therewith, and, in reliance on the prior orders of this Court establishing their right to do so, have entered into contractual relationships with third parties regarding same. On the other hand:

(b) Defendant Catherine Yvonne Stone is, despite (i) her failure to prove that she is the natural child of Hiriam "Hank" Williams, (ii) binding judicial decisions that she has no interest in the Estate of Hiriam "Hank" Williams, (iii) the absence of any adjudication under Alabama law that she is a child of Hiriam "Hank" Williams (iv) her own failure to pursue an adjudication under Alabama law that she is a child of Hiriam "Hank" Williams (v) the existence of a bar in *Code of Alabama* §26-17-6(e) to her bringing an action to establish herself as a child of Hiriam "Hank" Williams, and (vi) other bars to any effort by her to establish herself as a child of Hiriam "Hank" Williams, including statutes of limitations, waiver, laches, estoppel, res judicata and collateral estoppel, nevertheless claiming publicly to be a child of Hiriam "Hank" Williams, and therefore to have an interest in the Estate of Hiriam "Hank" Williams and the various properties which Plaintiffs have heretofore owned, used and enjoyed and with respect to which they have entered into contractual relationships with third parties.

28. Randall "Hank" Williams and Wesley H. Rose and Roy Acuff are suffering and will continue to suffer

real, immediate and irreparable injury by virtue of Defendant Stone's claims in that royalties and other payments justly due and owing them are being withheld and will be withheld in the future pending the outcome of this controversy. In addition, Randall Hank Williams is suffering and will continue to suffer substantial, irreparable injury in that Defendant Stone's claims and conduct are interfering with his right to use and enjoy the properties, rights, and privileges passing to him through the estate of his father, Hiriam "Hank" Williams, including, but not necessarily limited to, contracts, licenses, etc.

29. Randall Hank Williams and Roy Acuff and Wesley H. Rose aver that in order to determine the rights, status and legal relations of the parties hereto with respect to the matters set forth herein, it is necessary and desirable that this Court make and enter a Declaratory Judgment or Decree pursuant to the provisions cf [sic] Section 6-6-220, *et seq.* of the *Code of Alabama* (1975).

WHEREFORE, PREMISES CONSIDERED, Randall Hank Williams and Wesley H. Rose and Roy Acuff pray that the Court will enter a declaratory judgment establishing the following:

1. That Defendant Stone has never been adjudicated, under the laws of the State of Alabama, to be the child of Hiriam "Hank" Williams, and thus does not enjoy the status claimed by her in her statements and conduct described in paragraphs (17) through (21), above;

2. That, because of her status as an adopted child, Defendant Stone is barred under *Code of Alabama* (1975) Section 26-17-6(e) from now attempting to establish that she is a child of Hiriam "Hank" Williams;

3. That Defendant Stone is barred from now attempting to establish that she is a child of Hiriam "Hank" Williams by the applicable statute of limitations, the doctrines of laches, waiver and estoppel, and, because of this Court's prior judgments and orders in Civil Actions Nos. 25,056 and 27,960, by the doctrines of res judicata and collateral estoppel;

4. That, consistent with the prior orders and judgments of this Court in Civil Actions Nos. 25,056 and 27,960, as more fully described in paragraphs 10, 11, and 14, above, Randall Hank Williams is the sole child of Hiriam "Hank" Williams, and thus is the sole person with rights in and to the Estate of Hiriam "Hank" Williams, including, but not limited to, rights in musical compositions, recordings, copyrights, use of the name and likeness of Hiriam "Hank" Williams, and all other tangible and intangible rights deriving from said estate.

In addition, Plaintiffs pray for such other, further and different relief to which they may be entitled.

Respectfully submitted,

/s/ Maury D. Smith
MAURY D. SMITH

/s/ Sterling G. Culpepper, Jr.
STERLING G. CULPEPPER, JR.

/s/ David R. Boyd
DAVID R. BOYD

Attorneys for Wesley H. Rose and Roy Acuff, Trustees in Liquidation for Stockholders of Fred Rose Music, Inc., a

Tennessee Corporation, and
Randall Hank Williams, known
professionally as Hank Williams, Jr.

OF COUNSEL:

BALCH & BINGHAM
P. O. Box 78
Montgomery, Alabama 36101
(205) 834-6500

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon Thomas T. Gallion, III, Esq., 509 South Court Street, Montgomery, Alabama 36104, F. Keith Adkinson, Esq., 1312 Eighteenth Street, N.W., Washington, D.C. 20036, James A. Goodman, Esq. and Vincent H. Chieffo, Esq., 9601 Wilshire Blvd., Penthouse, Beverly Hills, California 90210-5270 by either placing same in the United States mail, postage prepaid and properly addressed on this the 14th day of November, 1985, or by Federal Express delivery on the same date.

/s/ David R. Boyd
OF COUNSEL

EXHIBIT "A"

LAW OFFICES

RUDIN, RICHMAN & APPEL

A PROFESSIONAL CORPORATION

PENTHOUSE

9601 Wilshire Boulevard
Beverly Hills, California 90210-5270

August 5, 1985

Mr. Hank Williams, Jr.
c/o J. R. Smith
P.O. Box 1088
Cullman, Alabama 35055

Re: *Cathy Yvonne Stone – Hank Williams, Sr. Copyrights*

Dear Mr. Williams:

Please be advised that this firm, in association with the law offices of F. Keith Adkinson, Esq., represents Cathy Yvonne Stone. Ms. Stone has just recently learned that she is the natural daughter of Hiriam "Hank" Williams and Bobbie Jett. Knowledge of the identify of her natural father had been actively concealed from Ms. Stone.

As the natural daughter of Hank Williams, she is the equitable owner of an undivided interest in the renewal copyrights to all Hank Williams compositions under both the Copyright Act of 1909 and the Copyright Act of 1976. These renewal copyrights include, but are not limited to, the musical compositions entitled "Cold, Cold Heart"; "Honkey Tonkin' "; "I Saw The Light"; "The Blues Come Around"; "Mind Your Own Business"; "I'm So Lonesome I Could Cry"; "Long Gone Lonesome Blues"; "Moanin' The Blues"; "Hey Good Looking"; "Ramblin' Man"; "Jambalaya (On The Bayou)"; and "Your Cheatin' Heart."

We have been advised that you, or your affiliates, claim, and have exercised, interests in and to the Hank

Williams, Sr. renewal copyrights, have failed to account to our client her proper share of all revenues derived from the exercise of such rights, and have denied the ownership interests of our client in such renewal copyrights. We are continuing to investigate whether you actively participated in the scheme to conceal from our client the identity of her natural father.

Accordingly, demand is hereby made that you recognize our client's undivided ownership interests in and to all Hank Williams renewal copyrights and that you account to her all sums received, and disbursed, by you with respect to the Hank Williams, Sr. renewal copyrights. In addition, please provide to the undersigned a list of all Hank Williams copyrights indicating whether they are in their renewal term and when such renewal term will, or has, commenced; identifying all individuals or entities known to you who claim any ownership interests in and to said renewal copyrights; and, identifying all individuals who claim any royalty, or other participation, in and to the revenues derived from the exploitation of those renewal copyrights. The information requested should be provided on a worldwide basis.

We request that you provide us with your initial written response to this demand within 15 days of this letter. Please be advised that we have been instructed by our client to take all necessary steps to protect and preserve her rights in the premises, including the commencement of litigation. In the event that we do not hear from you within 15 days from the date of this letter, we will interpret your silence as a rejection of Ms. Stone's claim

and a refusal to cooperate in any way. In such circumstances, we will take such further steps as we believe necessary without further advice to you.

Sincerely,

RUDIN, RICHMAN & APPEL

By: /s/ Vincent H. Chieffo
VINCENT H. CHIEFFO

VHC:le/4p-3098

cc: Cathy Yvonne Stone
F. Keith Adkinson, Esq.
Milton A. Rudin, Esq.

EXHIBIT "P"

LAW OFFICES

RUDIN, RICHMAN & APPEL

A PROFESSIONAL CORPORATION

PENTHOUSE

9601 WILSHIRE BOULEVARD

BEVERLY HILLS, CALIFORNIA 90210-5270

August 5, 1985

Fred Rose Music, Inc.
c/o Acuff-Rose Opryland, Inc.
2510 Franklin Road
Nashville, Tennessee 37204

Re: *Cathy Yvonne Stone – Hank Williams, Sr. Copyrights*

Gentlemen:

Please be advised that this firm, in association with the law offices of F. Keith Adkinson, Esq., represents Cathy Yvonne Stone. Ms. Stone has just recently learned that she is the natural daughter of Hiriam "Hank" Williams and Bobbie Jett. Knowledge of the identity of her natural father had been actively concealed from Ms. Stone.

As the natural daughter of Hank Williams, she is the equitable owner of an undivided interest in the renewal copyrights to all Hank Williams compositions under both the Copyright Act of 1909 and the Copyright Act of 1976. These renewal copyrights include, but are not limited to, the musical compositions entitled "Cold, Cold Heart"; "Honkey Tonkin' "; "I Saw The Light"; "The Blues Come Around"; "Mind Your Own Business"; "I'm So Lonesome I Could Cry"; "Long Gone Lonesome Blues"; "Moanin' The Blues"; "Hey Good Looking"; "Ramblin' Man"; "Jambalaya (On The Bayou)"; and "Your Cheatin' Heart."

We have been advised that you, or your affiliates, claim, and have exercised, interests in and to the Hank Williams, Sr. renewal copyrights, have failed to account to our client her proper share of all revenues derived from the exercise of such rights, and have denied the ownership interests of our client in such renewal copyrights. We are continuing to investigative whether you actively participated in the scheme to conceal from our client the identity of her natural father.

Accordingly, demand is hereby made that you recognize our client's undivided ownership interests in and to all Hank Williams renewal copyrights and that you account to her all sums received, and disbursed, by you

with respect to the Hank Williams, Sr. renewal copyrights. In addition, please provide to the undersigned a list of all Hank Williams copyrights indicating whether they are in their renewal term and when such renewal term will, or has, commenced; identifying all individuals or entities known to you who claim any ownership interests in and to said renewal copyrights; and, identifying all individuals who claim any royalty, or other participation, in and to the revenues derived from the exploitation of those renewal copyrights. The information requested should be provided on a worldwide basis.

We request that you provide us with your initial written response to this demand within 15 days of this letter. Please be advised that we have been instructed by our clients to take all necessary steps to protect and preserve her rights in the premises including the commencement of litigation. In the event that we do not hear from you within 15 days from the date of this letter, we will interpret your silence as a rejection of Ms. Stone's claim and a refusal to cooperate in any way. In such circumstances, we will take such further steps as we believe necessary without further advice to you.

Sincerely,

RUDIN, RICHMAN & APPEL

By: /s/ Vincent H. Chieffo
VINCENT H. CHIEFFO

VHC:le/4P-3098
cc: Cathy Yvonne Stone
F. Keith Adkinson, Esq.
Milton A. Rudin, Esq.

APPENDIX F-2

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

RANDALL HANK WILLIAMS, and WESLEY H. ROSE and ROY ACUFF, as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc. and Milene Music, Inc., both Tennessee Corporations, Plaintiffs, v. CATHERINE YVONNE STONE, Defendant.	CASE NO. CV-85-1316-Ph
CATHERINE YVONNE STONE, Counter-Claimant v. RANDALL HANK WILLIAMS, Counter-Defendant.	

COUNTERCLAIM FOR ESTABLISHMENT OF PATERNITY: DECLARATION OF RIGHTS; AND IMPOSITION OF CONSTRUCTIVE OR RESULTING TRUST

Counter-claimant Catherine Yvonne Stone (hereinafter "Stone") alleges as follows:

1. Stone is the natural daughter of Hiriam "Hank" Williams (hereinafter "Williams Sr.") and was born on January 6, 1953, five days after Williams Sr.'s death.

2. Stone is informed and believes and based thereon alleges that counter-defendant Randall Hank Williams (hereinafter "Williams Jr.") is a resident of the State of Tennessee.

3. Stone is informed and believes and based thereon alleges that Williams Jr. claims to be the sole natural child of Hiriam "Hank" Williams (hereinafter "Williams Sr.") and the only person entitled to inherit from the estate of Williams Sr.

4. Stone is informed and believes and based thereon alleges that the estate of Williams Sr. was opened in or about January 1953 and administered under the jurisdiction of this court continuously from 1953 through in or about August 1975. Stone is informed and believes that the estate closed in or about August 1975.

5. Stone is informed and believes and based thereon alleges that the only alleged heir of Williams Sr. to receive any proceeds from the Williams Sr. estate is Williams Jr.

6. Stone contends that:

(a) She is the natural daughter of Williams Sr.

(b) As natural daughter of Williams Sr., she is entitled to share at least one-half the proceeds of his estate.

7. Counter-defendant, Williams Jr., disputes Stone's contentions and contends that Stone is not the natural daughter of Williams Sr. and that she is not entitled to any proceeds from the estate of Williams Sr.

8. An actual controversy therefore exists between Stone and Williams Jr. and Stone prays for a determination that:

(a) She is the natural daughter of Williams Sr.;

(b) As natural daughter of Williams Sr., she is entitled to at least one-half the proceeds of the estate of Williams Sr.;

(c) Williams Jr. must render an immediate accounting of all revenue, income, monies and other consideration administered through the estate of Williams Sr. and paid to Williams Jr. from that estate.

9. Stone prays that a constructive and/or resulting trust be imposed on all money or other consideration received by Williams Jr. from the estate of Williams Sr. pending the determination of this action.

WHEREFORE, Stone prays for a judgment as follows:

1. That Stone's paternity be determined and adjudicated;

2. That Stone be awarded her proportionate interest in the proceeds of the estate of Williams Sr.;

3. That Randall Hank Williams be ordered to account to Stone for all monies or other consideration received from the estate of Williams Sr.;

4. For imposition of a constructive or resulting trust on all monies derived by Randall Hank Williams from the estate of Williams Sr.

5. For reasonable attorneys' fees, costs of suit herein incurred, any such other and further relief as this court deems just and proper.

Counter-claimant Catherine Yvonne Stone hereby demands trial by jury.

Respectfully submitted,

Haskell, Slaughter & Young

Thomas T. Gallion III
207 Montgomery Street
Bell Building, Suite 1250
Montgomery, Alabama 36104

F. Keith Adkinson
1312 Eighteenth Street, N.W.
Washington, D.C. 20036

Rudin, Richman & Appel
A Professional Corporation
Vincent H. Chieffo
James A. Goodman
9601 Wilshire Boulevard
Penthouse
Beverly Hills, CA 90210-5270

APPENDIX F-3

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

RANDALL HANK WILLIAMS, and WESLEY H. ROSE and ROY ACUFF, as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc., both Tennessee corporations, Plaintiffs, V. CATHERINE YVONNE STONE, Defendant.	CASE NO. CV-85-1316-Ph
CATHERINE YVONNE STONE, Counter-Claimant V. RANDALL HANK WILLIAMS, Counter-Defendant.	
CATHERINE YVONNE STONE, Third Party Plaintiff, V. GULF AMERICAN FIRE & CASUALTY COMPANY; AMERICAN STATES INSURANCE COMPANY; JONES, MURRAY & STEWART, P.C.; IRENE SMITH; THE ESTATE OF ROBERT B. STEWART; A, being that real Party in interest known only to Stone as Gulf American Fire & Casualty Company; B, being that real party in interest known only to Stone as American States Insurance Company; C, being	

that real party in interest known only to Stone as Jones, Murray & Stewart, P.C.; D, being that real party in interest known only to Stone as Irene Smith; E, being that real party in interest known only to Stone as the Estate of Robert B. Stewart; F, whether singular or plural, being that person, firm, corporation or association who or which was or served as a surety on the bond of the administrator or administratrix of the estate of Hiriam "Hank" Williams; G, whether singular or plural, being that person, firm, corporation, or association, who or which was appointed and served as the administrator or administratrix of the estate of Hiriam "Hank" Williams; H, whether singular or plural, being that person, firm, corporation, or association, who or which was the attorney for the estate of Hiriam "Hank" Williams; I, whether singular or plural, being that person, firm, corporation, or association, who or which had the responsibility, obligation and ability to advise the Probate Court or Circuit Court of Montgomery County, Alabama of the existence and status of Stone; J, whether singular or plural, being that person, firm, corporation, or association, who or which concealed the identity, existence, claims and rights of Stone from Montgomery County Circuit Court; K, whether singular or plural, being that person, firm, corporation or association, who or which concealed and suppressed from Stone relevant facts and information regarding her claims and interest in the estate of Hiriam "Hank" Williams; L, whether singular or plural, being that person, firm, corporation or association, who or which participated in a conspiracy or agreement to conceal Stone's existence and identity from the Montgomery County Circuit Court or Probate Court; M, whether singular or plural, being that person, firm, corporation, or association who or which caused the damages suffered by Stone as alleged in the Third Party Complaint; N, whether singular or plural, being that person, firm, corporation or association who or which is the successor in interest of any of the above fictitiously named and described real parties in interest.

Third Party Defendants.

SUMMONS

To any sheriff or any person authorized by either Rules 4.1(b)(2) or 4.2(b)(2) or 4.4(b)(2) of the Alabama Rules of Civil Procedure to effect service.

You are hereby commanded to serve this summons and a copy of the complaint in this action upon:

Estate of Robert B. Stewart

Serve: June L. Stewart, Executrix
3607 McCurdy Street
Montgomery, Alabama 36111

Jones, Murray & Stewart, P.C.
272 Commerce Street
Montgomery, Alabama 36195

American States Insurance Company
Serve: J.B. Ridgewell
2525 E. South Boulevard
Montgomery, Alabama 36116

Gulf American Fire & Casualty Company
Serve: J.B. Ridgewell
2525 E. South Boulevard
Montgomery, Alabama 36116

Irene Smith
610 North Barnett
No. 2
Dallas, Texas 75211

NOTICE TO DEFENDANT

The complaint which is attached to this summons is important and you must take immediate action to protect your rights. You are required to mail or hand deliver a copy of a written Answer, either admitting or denying each allegation in the complaint, to DAVID CROMWELL JOHNSON, the lawyer for the plaintiff, whose address is:

9th Floor Title Building, 300 North 21st Street, Birmingham, Alabama 35203-3322.

THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN THIRTY DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT. You must file the original of the Answer with the Clerk of this Court within a reasonable time afterward.

_____

DEBRA HACKETT, CLERK

DATED:_____

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

RANDALL HANK WILLIAMS, and WESLEY H. ROSE and ROY ACUFF, as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc., both Tennessee corporations,	)	CASE NO. CV-85-1316-Ph
Plaintiffs,	)	
V.	)	
CATHERINE YVONNE STONE,	)	
Defendant.	)	
CATHERINE YVONNE STONE,	)	
Counter-Claimant	)	
V.	)	
RANDALL HANK WILLIAMS,	)	
Counter-Defendant.	)	
CATHERINE YVONNE STONE,	)	
Third Party Plaintiff,	)	
V.	)	
GULF AMERICAN FIRE & CASUALTY COMPANY, AMERICAN STATES INSURANCE COMPANY; JONES, MURRAY & STEWART, P.C.; IRENE SMITH; THE ESTATE OF ROBERT B. STEWART; A, being that real party in interest known only to Stone as Gulf American Fire & Casualty Company; B, being that real party in interest known only to Stone as American States Insurance Company; C, being that real party in interest known only to Stone as Jones,	)	

Murray & Stewart, P.C.; D, being that real party in interest known only to Stone as Irene Smith; E, being that real party in interest known only to Stone as the Estate of Robert B. Stewart; F, whether singular or plural, being that person, firm, corporation or association who or which was or served as a surety on the bond of the administrator or "administratrix of the estate of Hiriam "Hank" Williams; G, whether singular or plural, being that person, firm, corporation, or association, who or which was appointed and served as the administrator or administratrix of the estate of Hiriam "Hank" Williams; H, whether singular or plural, being that person, firm, corporation, or association, who or which was the attorney for the estate of Hiriam "Hank" Williams; I, whether singular or plural, being that person, firm, corporation, or association, who or which had the responsibility, obligation and ability to advise the Probate Court or Circuit Court of Montgomery County, Alabama of the existence and status of Stone; J, whether singular or plural, being that person, firm, corporation, or association, who or which concealed the identity, existence, claims and rights of Stone from Montgomery County Circuit Court; K, whether singular or plural, being that person, firm, corporation or association, who or which concealed and suppressed from Stone relevant facts and information regarding her claims and interest in the estate of Hiriam "Hank" Williams; L, whether singular or plural, being that person, firm, corporation or association, who or which participated in a conspiracy or agreement to conceal Stone's existence and identity from the Montgomery County Circuit Court or Probate Court; M, whether singular or plural, being that person, firm, corporation, or association who or which caused the damages suffered by Stone as alleged in the Third Party Complaint; N, whether singular or plural, being that person, firm, corporation or association who or which is the successor in interest of any of the above fictitiously named and described real parties in interest.

Third Party Defendants.

THIRD PARTY COMPLAINT FOR FRAUD, FRAUDULENT CONCEALMENT, CONSPIRACY AND TO ENFORCE SURETY BOND

Third party plaintiff, Catherine Yvonne Stone (hereinafter "Stone"), alleges as follows:

ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

1. Plaintiffs Randall Hank Williams, Wesley H. Rose and Roy Acuff, as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc. and Milene Music, Inc., both Tennessee corporations (hereinafter collectively referred to as "plaintiffs"), have commenced an action against Stone for declaratory relief. A true and correct copy of plaintiff's Second Amended Complaint is attached hereto and fully incorporated herein as Exhibit "1".

2. Stone has commenced an action to establish her paternity and for a declaration of rights, an imposition of constructive or resulting trust against plaintiff and counter-defendant, Randall Hank Williams. A true and correct copy of that Counterclaim is attached hereto as Exhibit "2".

3. Stone is informed and believes and based thereon alleges that third party defendant Jones, Murray & Stewart, P.C. and its predecessors in interest (hereinafter "JM&S") is, and at all times herein relevant was, a professional legal corporation doing business in Montgomery County, Alabama.

4. Stone is informed and believes and based thereon alleges that Robert B. Stewart (hereinafter "Stewart") was

at all times herein relevant a principal and member of JM&S. Stewart and/or JM&S from in or about 1953 through in or about August, 1975 acted as attorney for the estate of Hiriam "Hank" Williams (hereinafter "the estate").

5. Stone is informed and believes and based thereon alleges that third party defendant Irene Smith (hereinafter "Smith") was from in or about 1955 through 1969 the administratrix of the estate. Stone is informed and believes that Smith is a resident of the State of Texas.

6. The estate was initially opened in or about January, 1953 and was first administered by the mother of "Hiriam" Hank Williams, Sr., (hereinafter Williams, Sr.), Lillian Williams Stone, until her death in or about 1955. At that time, the administratrix responsibilities were purportedly assumed by her daughter, and Williams Sr.'s sister, third party defendant Smith. Smith continued to act as administratrix of the estate until in or about 1969 when Smith resigned as administratrix because she was convicted of cocaine smuggling in Laredo, Texas. At that time, in or about 1969, Stewart assumed responsibility as the administrator for the estate and continued as attorney for the estate until it closed in or about August, 1975.

7. Stone is informed and believes and based thereon alleges that Stewart died in or about 1985 and his estate is presently being administered under the jurisdiction of the Probate Court of Montgomery County, Alabama. The executrix of the estate of Robert B. Stewart is June L. Stewart.

8. Stone is informed and believes and based thereon alleges that Gulf American Fire & Casualty Company

(hereinafter "GAFC"), and was, at all times herein relevant, a surety on the administrator's bond regarding the estate of Williams Sr. and had notice of all pertinent proceedings regarding the estate as hereinafter alleged. Stone is informed and believes that GAFC merged with American States Insurance ("ASIC") Company in or about 1979 and that American States Insurance Company is the successor in interest of GAFC.

9. Stone is unaware of the true names and capacities, whether individual, corporate, associate or otherwise of real parties in interest fictitiously described as defendants A through N inclusive, or any of them. Stone will seek leave of court to amend this Complaint to show the true names and capacities of said real parties in interest when same have been ascertained.

10. Smith and Stwart [sic] knew of Stone since her birth on January 6, 1953 and knew, since that time, that she had claims and rights in the estate of Williams, Sr. as the natural child of Hank Williams, Sr. While acting in their respective capacities as administrator and/or attorney for the estate, Smith, Stewart and JM&S had a confidential relationship with Stone; they were charged with the highest degree of fiduciary duty to Stone; they were obligated to fully advise her or her appropriate representatives of all material facts and theories which could affect her claims, rights and interest arising from the fact that she is the natural daughter of Hank Williams, Sr.; they were required to take whatever measures were necessary to protect her interest; and they were prohibited from placing the interest of another potential heir over

her interest. Smith, Stewart and JM&S knew, or had reason to know, that the Court, in connection with administering and making a determination with respect to the estate, would depend in great measure on the integrity and thoroughness of Stewart and JM&S and would depend on the facts and issues presented to the Court by Stewart.

FIRST CLAIM FOR RELIEF TO REOPEN THE ESTATE OF HIRIAM 'HANK' WILLIAMS BASED ON FRAUD ON THE COURT

11. Stone incorporates herein by reference each and every allegation set forth in paragraphs 1 through 10 of this Third Party Complaint as though fully set forth herein.

12. From in or about 1953 through sometime in 1967, Smith, Stewart and JM&S, through Stewart, and real parties in interest C, D, E, G, H, I, J, K, M, and N, intentionally, willfully and fraudulently concealed Stone's identity, existence, claim and rights as natural child of Hank Williams, Sr. from the Montgomery County Circuit Court in contravention of their respective fiduciary obligations to Stone and in contravention of their respective obligations to the Court.

13. As a direct and proximate result of the fraudulent concealment by Third Party defendants and real parties in interest as aforesaid, no guardian ad litem was appointed to represent Stone's interest from 1953 through sometime in 1967 and Stone was further precluded from adjudicating her paternity within two years of Williams, Sr.'s death as required by then applicable Alabama law.

14. In or about 1967 Stone's identity was finally disclosed to the Court and on or about December 1, 1967 in the matter styled *In the Matter of the Estate of Hiriam "Hank" Williams, Deceased*. The Circuit Court of Montgomery County, Alabama, in Equity, Case No. 25-056, entered an order which purported to affect Stone's rights to the Williams estate (hereinafter "the order").

15. To the extent the order purports to in any manner govern Stone's rights in the estate of Williams, Sr. it is, and has been since the day if [sic] was entered, a legal nullity without any force or effect because, in part, of the fraudulent conduct alleged hereinabove.

16. Third party defendants and real parties in interest C, D, E, G, H, I, J, K, M and N, knew, or had reason to believe, at all times relevant hereto, that under existing Alabama law, Stone was entitled within one or two years after her twenty-first birthday, on January 6, 1974, to pursue appropriate legal action to set aside the order of December 1, 1967, or any other orders entered before her twenty-first birthday which purported to affect her rights.

17. Stewart, acting as successor in interest of Smith, and JM&S, and real parties in interest C, D, E, G, H, I, J, K, M and N, in furtherance of the fraudulent conduct alleged hereinabove, concealed and suppressed relevant facts and information alleged hereinabove from Stone, both before and after she reached the age of majority.

18. In furtherance of the fraudulent conduct alleged hereinabove, the estate was closed in or about August, 1975 and Stewart, acting as successor in interest to Smith and JM&S, and real parties in interest C, E, G, H, I, J, K,

M and N, contrary to their confidential special and fiduciary relationship to Stone as a claiment to the estate, failed at any time to advise Stone or any of her representatives of any pertinent facts, theories, or of any rights or claims she may have either before or after she reached the age of majority, and intentionally failed to notify Stone of any of her representatives that the estate would close in or about 1975.

19. As a proximate result of the wrongful acts alleged, the order of December 1, 1967, and all subsequent or prior orders which purport to affect Stone's rights to the estate, including the final order of distribution of the estate, were procured, with respect to any rights of Stone, by fraud perpetrated on the Court. The estate is therefore due to be reopened and Stone is entitled to share in the estate as the natural daughter of Hank Williams, Sr.

20. As a proximate result of the wrongful acts herein alleged, Stone has been generally damaged in a sum that is not yet ascertainable but in excess of $10,000,000.00.

21. The acts of third party defendants Stewart, JM&S and Smith, and real parties in interest C, D, E, G, H, I, J, K, M and N, were done knowingly, maliciously, oppressively and contrary to express fiduciary confidential and special relationships between those third party defendants and Stone, and Stone is therefore entitled to punitive and/or exemplary damages in a sum of at least $10,000,000.00 from each third party defendant.

SECOND CLAIM FOR RELIEF
AGAINST ALL THIRD PARTY DEFENDANTS
FOR FRAUDULENT CONCEALMENT

22. Stone incorporates herein by reference each and every allegation contained in paragraphs 1 through 10 and 12 through 19 of this Third Party Complaint as though fully set forth herein in full.

23. Stewart, Smith, JM&S, GAFC, and ASIC as successor in interest to GAFC, and real parties in interest, A, B, C, D, E, F, G, H, I, J, K, M and N, had a confidential special and fiduciary relationship with Stone by virtue of her recognized position as a claimant to the estate of Williams, Sr.

24. By virtue of that special, confidential and fiduciary relationship an obligation was imposed by law on the above named third party defendants and real parties in interest to disclose to Stone, or to her representatives and guardians, all pertinent facts, theories or other information necessary for her to properly evaluate and pursue her interest in the estate of Williams, Sr.

25. The above third party defendants and real parties in interest defrauded Stone by failing to disclose pertinent facts, theories, or other necessary information to Stone, or to her appropriate guardians or representatives, as alleged hereinabove at paragraphs 10 and 12 through 19 inclusive.

26. As a proximate result of the wrongful acts herein alleged, plaintiff has not received any portion of the estate of Williams, Sr. and has been generally damaged in a sum that is not yet ascertainable but in excess of $10,000,000.00

27. The acts of the above named third party defendants and real parties in interest, were done knowingly, maliciously, oppressively and contrary to express fiduciary confidential and special relationships between those third party defendants and Stone, and Stone is therefore entitled to punitive and/or exemplary damages in a sum of at least $10,000,000.00 from each third party defendant and real party in interest.

THIRD CAUSE OF ACTION AGAINST ALL THIRD PARTY DEFENDANTS FOR CONSPIRACY TO DEFRAUD

28. Stone incorporates herein by reference each and every allegation contained in paragraph 1 through 10 and 12 through 19 of the Third Party Complaint as though fully set forth herein.

29. Commencing in or about 1953 and continuing thereafter, Stewart, Smith, JM&S, as successor in interest to Stewart, GAFC, ASIC, as successor in interest to GAFC, and real Parties in interest A through N, knowingly and willfully conspired and agreed among themselves, and each of them, to conceal Stone's existence from the Court and to conceal pertinent information, facts and theories from Stone and her appropriate representatives and guardians as more specifically alleged herein at paragraphs 10, and 12 through 19 inclusive.

30. Co-conspirator defendants, and each of them, did the acts and things alleged in furtherance of the conspiracy and the above-alleged agreement.

31. As a Proximate result of the wrongful acts herein alleged, Stone has not received any Property or income

from the estate of Williams, Sr. and has, as a result thereof, been damaged in a sum that is not yet ascertainable but in excess of $10,000,000.00.

32. The acts of said third party defendants and real parties in interest, were done knowingly, maliciously, oppressively and contrary to express fiduciary confidential and special relatioships [sic] between those third party defendants and Stone, and Stone is therefore entitled to punitive and/or exemplary damages in a sum of at least $10,000,000.00 from each third party defendant and real parties in interest.

FOURTH CLAIM FOR RELIEF AGAINST SURETIES FOR PAYMENT ON SURETY BOND

33. Stone incorporates herein by reference each and every allegation contained in paragraphs 1 through 10 of this Third Party Complaint as though fully set forth herein.

34. Stone has instituted an action for, in part, fraud and conspiracy to recover damages against Smith, Stewart and JM&S and real parties in interest as a direct and proximate result of their acts as administrator and/or attorneys for the estate of Williams, Sr.

35. Stone is informed and believes that at all times relevant hereto third party defendant GAFC and ASIC, as successor in interest of GAFC, and real party in interest A, B, F, and N, were a surety on the administrator's bond in connection with the estate of Williams, Sr.

36. In the event Stone recovers judgment against either Smith, Stewart or JM&S or real parties in interest,

third party defendant Gulf American Fire and Casualty Company and ASIC, as successor in interest, and real parties in interest A, B, F and N, are liable as surety and Stone hereby demands judgment therefor.

WHEREFORE, third party plaintiff, Catherine Yvonne Stone, prays for judgment as follows:

ON THE FIRST CLAIM FOR RELIEF

1. That the estate of Williams, Sr. be reopened and all orders purportedly governing Stone's rights in that estate be declared null and void.

2. That Stone be entitled to share her proportionate interest in all property and income of the estate.

3. For general damages against third party defendants, and real parties in interest and each of them, for a sum not yet ascertainable but in no event less than $10,000,000.00.

4. For Punitive and exemplary damages in the sum of $10,000,000.00.

ON THE SECOND CLAIM FOR RELIEF

5. For general damages in a sum not yet ascertainable but in the sum of at least $10,000,000.00.

6. For punitive and exemplary damages in the sum of at least $10,000,000.00.

ON THE THIRD CLAIM FOR RELIEF

7. For general damages in a sum not yet ascertainable but in the sum of at least $10,000,000.00.

8. For punitive and exemplary damages in the sum of at least $10,000,000.00.

ON THE FOURTH CLAIM FOR RELIEF

9. For an order requiring Gulf American Fire & Casualty Company and American States Insurance Company, as successor in interest, or real parties in interest A, B, F and N, to compensate Stone for any money or property declared due and owing to her but not recovered on the First, Second and Third Causes of Action against any of the other third party defendants or real parties in interest.

DATED: _____

/s/ David Cromwell Johnson
DAVID CROMWELL JOHNSON
Attorney for Stone
300 North 21st Street
Suite 900, Title Building
Birmingham, Alabama 35203
(205) 328-1414

/s/ James A. Goodman
JAMES A. GOODMAN
Rudin, Richman & Appel, P.C.
Attorney for Stone
9601 Wilshire Boulevard
Beverly Hills, California 90210

/s/ Keith Adkinson
KEITH ADKINSON
Attorney for Stone
P.O. Box 70495
Washington, D.C. 20024

Third Party Plaintiff demands a trial by struck jury on all issues.

/s/ David Cromwell Johnson
DAVID CROMWELL JOHNSON

Third Party Plaintiff:

C/O Johnson Cory & McNamee, P.C.
300 North 21st Street
Suite 900, Title Building
Birmingham, Alabama 35203

Third Party Defendants:

Estate of Robert B. Stewart
Serve: June L. Stewart, Executrix
3607 McCurdy Street
Montgomery, Alabama 36111

Jones, Murray & Stewart, P.C.
272 Commerce Street
Montgomery, Alabama 36195

American States Insurance Company
Serve: J.B. Ridgewell
2525 E. South Boulevard
Montgomery, Alabama 36116

Gulf American Fire & Casualty Company
Serve: J.B. Ridgewell
2525 E. South Boulevard
Montgomery, Alabama 36116

Irene Smith
610 North Barnett
No. 2
Dallas, Texas 75211

CERTIFICATE OF SERVICE

I do certify that I have mailed a copy of the foregoing on all counsel of record by placing same in the United States mail, first class postage prepaid, on this the 24 day of October, 1986.

/s/ David Cromwell Johnson
DAVID CROMWELL JOHNSON

BALCH & BINGHAM
Maury D. Smith
Sterling G. Culpepper, Jr.
David R. Boyd
P.O. Box 78
Montgomery, Alabama 36101

APPENDIX F-4

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

RANDALL HANK WILLIAMS, and WESLEY H. ROSE and ROY ACUFF, as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc., and Milene Music, Inc., both Tennessee corporations,	)	
Plaintiffs,	)	CASE NO. CV-85-1316-PH
V.	)	
CATHERINE YVONNE STONE,	)	
Defendant.	)	
CATHERINE YVONNE STONE,	)	
Counterclaimant	)	
V.	)	
RANDALL HANK WILLIAMS,	)	
Counterclaim Defendant.	)	

MOTION FOR SUMMARY JUDGMENT

Come Randall Hank Williams and Wesley H. Rose and Roy Acuff as Trustees in Liquidation for the Stockholders of Fred Rose Music, Inc. and Milene Music, Inc., Plaintiffs, and Randall Hank Williams as Counterclaim-Defendant, and move the Court to enter pursuant to Rule 56 of the Alabama Rules of Civil Procedure, a summary judgment in Plaintiffs' favor for the relief demanded in their complaint; and in the Counterclaim-Defendants' favor dismissing the counterclaim against him. As grounds

for said motion, the moving parties say that there is no genuine issue as to any material fact and that the said Plaintiffs-Counterclaim Defendant is entitled to a judgment as a matter of law.

This motion is based upon the pleadings, upon the deposition of Catherine Yvonne Stone taken December 10, 1985, the deposition of Emma Jean Austin taken November 13, 1986, the deposition of Louise Pittman taken November 13, 1986, the deposition of Drayton Hamilton taken March 17, 1986, and the affidavit of Wesley Rose, attached. This motion is also based upon the following depositions taken in those proceedings pending in the United States District Court for the Southern District of New York, Civil Action No. 85 Civ. 7133 JFK, styled *Catherine Yvonne Stone*, Plaintiff, *v. Hank Williams, et al.*, Defendants; the deposition of Mary Louise Deupree taken June 16, 1986; the deposition of Nicholas T. Braswell taken June 18, 1986; the deposition of Fletcher Keith Atkinson taken September 18, 1986; and the deposition of Emma Jean Austin taken July 22, 1986. This motion is also based upon pleadings and orders contained in the court files of the Circuit Court of Montgomery County, Alabama, the Probate Court of Montgomery County, Alabama, and the Probate Court of Mobile County, Alabama, which said pleadings and orders are attached hereto as Exhibits "A" through "DD."

/s/ Maury D. Smith
Maury D. Smith

/s/ Sterling G. Culpepper
Sterling G. Culpepper

/s/ David R. Boyd
David R. Boyd

OF COUNSEL:

BALCH & BINGHAM
P. O. Box 78
Montgomery, Alabama 36101
(205) 834-6500

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon F. Keith Adkinson, Esquire, 1312 Eighteenth Street, N.W., Washington, D.C. 20036; James A. Goodman, Esq. and Vincent H. Chieffo, Esq., 9601 Wilshire Blvd., Penthouse, Beverly Hills, California 90210-5270; and David C. Johnson, Esq., 300 21st Street, N., 9th Floor, Birmingham, Alabama 35203, by placing same in the United States mail, postage prepaid and properly addressed on this the 17th day of November, 1986.

/s/ David R. Boyd
OF COUNSEL

AFFIDAVIT

I, Wesley H. Rose, being first duly sworn avers as follows:

That I was the President and Chief Executive Office [sic] of Acuff Rose Publications, Inc. Red Rose Music, Inc. and Milene Music, Inc. from the time of the formation of those companies in 1963 until the liquidation in May, 1985. That I was the Partner and Chief Operating Officer of the music publishing partnerships which were the predecessors in interest to the above named corporations from 1955 until the formation of the corporations.

That, as the Chief Executive Officer for Fred Rose Music, Inc., a party to the litigation involving the Estate of Hank Williams and the Guardianship Estate of Randall Hank Williams, Jr. in the Circuit Court of Montgomery County, Alabama in and about 1967, I was aware of the existence of a child who had been born to Bobbie Jett and subsequently adopted. I was further aware that the late Hank Williams had executed a document relating to that child. I was unaware of the identity of the child or of her adoptive parents other than that they lived in the Mobile, Alabama area.

I know that, in December, 1967 and January, 1968, Judge Richard Emmett, then Judge for the Circuit Court for Montgomery, Alabama, considered and determined that the child, whom I now know to be using the name "Cathy Stone", had no interest in the Estate of Hank Williams or in the renewal copyrights of the musical compositions written, in whole or in part, by the late Hank Williams.

To the best of my knowledge, neither the child nor her parents at any time made any effort of any nature to challenge the decrees of the Circuit Court of Montgomery County, Alabama or otherwise assert any clainm [sic] to the rights dealt with in those orders until the present litigation initiated in the later part of 1985. Prior to 1985, in reliance upon the judgments of the Circuit Court of Montgomery County, Alabama and the failure of Cathy Stone to challenge such judgments, I, on behalf of the companies I head, have dealt in commerce throughout the world with the copyrights and renewal copyrights of the songs written by the late Hank Williams, warranting the titles of Fred Rose Music, Inc. and Milene Music, Inc.

thereto, and, in May, 1985 selling and conveying those renewal copyrights together with the other copyrights of the companies to Opryland USA, Inc. In that sale, I warranted, together with Roy Acuff that we as trustees in liquidation for the stockholders of Fred Rose Music, Inc. and Milene Music, Inc., were lawful owners of one-half undivided interest in the compositions of the late Hank Williams and had the right to convey the same in reliance upon prior judgments of the Circuit Court of Montgomery County, Alabama and of the failure for many years of the person I now know as Cathy Stone to challenge the effect of those orders or otherwise claim rights inconsistent with those orders.

Further affiant saith not

/s/ Wesley H. Rose
WESLEY H. ROSE

Sworn to and subscribed to before me this 13th day of November, 1986.

/s/ Nancy Ann Riley
NOTARY PUBLIC

My Commission Expires November 1, 1987

My Commission Expires: _____

APPENDIX F-5

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

RANDALL HANK WILLIAMS, and WESLEY H. ROSE and ROY ACUFF, as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc., both Tennessee corporations,	)	CIVIL ACTION NO. CV-85-1316-PH
Plaintiffs,	)	
vs.	)	
CATHERINE YVONNE STONE,	)	
Defendant.	)	
CATHERIN [sic] YVONNE STONE,	)	
Counter-Claimant,	)	
vs.	)	
RANDALL HANK WILLIAMS,	)	
Counter-Defendant.	)	
CATHERIN [sic] YVONNE STONE,	)	
Third Party Plaintiff,	)	
vs.	)	
GULF AMERICAN FIRE & CASUALTY COMPANY; et al.,	)	
Third Party Defendants.	)	

MOTION FOR SUMMARY JUDGMENT

Now come Third Party Defendants Jones, Murray & Stewart and the Estate of Robert B. Stewart and move the Court to grant them a summary judgment on the grounds there is no issue of material fact that would support a

judgment for the Third Party Plaintiffs and that the Third Party Defendants are entitled to a judgment as a matter of law based on the pleadings and the depositions and exhibits filed in support of the motion for summary judgment of Plaintiffs Randall Hank Williams, Wesley H. Rose and Roy Acuff, as Trustees in Liquidation for the Stockholders of Fred Rose Music, Inc. and Milene Music, Inc. For additional grounds, the Defendant Estate of Robert B. Stewart attaches hereto an affidavit of Walker Hobbie, Probate Judge of Montgomery County, Alabama that shows no claim was filed by Third Party Plaintiff Catherine Yvonne Stone within six months after the grant of Letters Testamentary to June L. Stewart as Executrix of the Estate of Robert B. Stewart.

WHEREFORE, THESE PREMISES CONSIDERED, these Defendants, Jones, Murray & Stewart and the Estate of Robert B. Stewart aver they are entitled to a summary judgment.

/s/ Robert C. Black
ROBERT C. BLACK, Attorney
for Jones, Murray & Stewart
and the Estate of Robert B.
Stewart

OF COUNSEL:

HILL, HILL, CARTER, FRANCO,
COLE & BLACK
P.O. BOX 116
Montgomery, Alabama 36195
(205)834-7600

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Motion for Summary Judgment upon all

counsel of record in this cause by hand delivering same to them in open court this 3rd day of February, 1987.

/s/ Robert C. Black
OF COUNSEL

STATE OF ALABAMA)

MONTGOMERY COUNTY)

AFFIDAVIT

Before me, the undersigned notary public in and for said County and State, personally appeared Walker Hobbie, Jr., who after first being duly sworn, says as follows:

My name is Walker Hobbie, Jr. I am Probate Judge of Montgomery County, Alabama. According to the records of the Probate Court of Montgomery County, Alabama, Letters of Administration on the Estate of Robert B. Stewart were issued to June L. Stewart as Executrix of the Estate of Robert B. Stewart on February 4, 1985. No claim was filed by Catherine Yvonne Stone within six months after the grant of Letters Testamentary to June L. Stewart, as Executrix of the Estate of Robert B. Stewart.

Done this the 12th day of January, 1987.

/s/ Walker Hobbie, Jr.
WALKER HOBBIE, JR.
Probate Judge

Sworn to the subscribed before me this 12th day of January, 1987.

/s/ Nellyne S. Wiston
NOTARY PUBLIC

MY COMMISSION EXPIRES:
3/4/89

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

RANDALL HANK WILLIAMS, et al.,	)	
Plaintiff,	)	
vs.	)	CASE NO. CV-85-1316
CATHERINE YVONNE STONE,	)	
Defendant.	)	
CATHERINE YVONNE STONE,	)	
Plaintiff,	)	CASE NO. CV-85-1007
vs.	)	
RANDALL HANK WILLIAMS,	)	
Defendant.	)	

MOTION FOR SUMMARY JUDGMENT

Comes now Irene Smith, a third party Defendant in this cause and respectfully moves this Court for a summary judgment in her favor pursuant to rule 56(b) of A.R.C.P. As grounds therefore and in support thereof, said Irene Smith avers:

1. There is no genuine issue as to any material fact in regard to the liability of Irene Smith.

2. The pleadings, exhibits and other documents filed in support of a motion for summary judgment by Randall Hank Williams, Wesley H. Rose and Roy Acuff are hereby adopted by this reference and those exhibits establish that there is no genuine issue as to any material fact in regard to the liability of Irene Smith and the said Irene Smith is entitled to a judgment as a matter of law.

Wherefore the Defendant, Irene Smith, prays that she be granted judgment in her favor and dismissed as a Defendant in this cause.

/s/ James F. Hampton
JAMES F. HAMPTON,
Attorney for Irene Smith

CERTIFICATE OF SERVICE

I do hereby certify that I have served a copy of the foregoing on the following persons by placing said copy in the United States mail, postage prepaid, and addressed correctly. Done this the 3rd day of February, 1987.

/s/ James F. Hampton
JAMES F. HAMPTON

Sterling G. Culpepper
Balch & Bingham
P. O. Box 78
Montgomery, AL 36101

Robert Black
Hill, Hill, & Carter
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Montgomery, AL 36195-2401

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Beverly Hills, CA 90210

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P. O. Box 70495
Washington, DC 20024

Richard H. Frank, Jr.
1200 One Commerce Place
Nashville, TN 37219

Alan L. Shulman
136 East 57th Street
New York, NY 10022

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

RANDALL HANK WILLIAMS, and WESLEY H. ROSE and ROY ACUFF, as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc., both Tennessee corporations,	*	CIVIL ACTION NO. 85-1316-PH
Plaintiffs,	*	
vs.	*	
CATHERINE YVONNE STONE,	*	
Defendant.	*	
CATHERINE YVONNE STONE,	*	
Counter-Claimant,	*	
vs.	*	
RANDALL HANK WILLIAMS,	*	
Counter-Defendant.	*	
CATHERINE YVONNE STONE,	*	
Third Party Plaintiff,	*	
vs.	*	
GULF AMERICAN FIRE & CASUALTY COMPANY; AMERICAN STATES INSURANCE COMPANY; JONES, MURRAY & STEWART, P.C.; IRENE SMITH; THE ESTATE OF ROBERT B. STEWART; et al.	*	
Third Party Defendants.	*	

MOTION FOR SUMMARY JUDGMENT

COMES NOW Third Party Defendants, GULF AMERICAN FIRE & CASUALTY COMPANY and AMERICAN STATES INSURANCE COMPANY and move the Court to enter, pursuant to Rule 56(b) of the Alabama Rules of Civil Procedure, summary judgment in favor of Third Party Defendants, GULF AMERICAN FIRE & CASUALTY COMPANY and AMERICAN STATES INSURANCE COMPANY, against Third Party Plaintiff, CATHERINE YVONNE STONE, on the ground that there is no issue as to any material fact; and the Third Party Defendants, GULF AMERICAN FIRE & CASUALTY COMPANY and AMERICAN STATES INSURANCE COMPANY, are entitled to judgment as a matter of law, based upon the pleadings, and the depositions and exhibits filed in support of the Motion For Summary Judgment of Plaintiffs, RANDALL HANK WILLIAMS, WESLEY H. ROSE and ROY ACUFF, as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc. and Milene Music, Inc., and Third Party Defendants, JONES, MURRAY & STEWART, P.C. and THE ESTATE OF ROBERT B. STEWART.

/s/ James E. Williams
JAMES E. WILLIAMS,
Attorney for Gulf
American Fire &
Casualty Company and
American States
Insurance Company

OF COUNSEL:

MELTON & ESPY, P.C.
P. O. Box 1267
Montgomery, AL 36102
205/263-6621

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion to Dismiss has been served upon David Cromwell Johnson, 300 North 21st Street, Suite 900, Title Building, Birmingham, AL 35203, James A. Goodman, 9601 Wilshire Boulevard, Beverly Hills, California 90210, F. Keith Adkinson, P. O. Box 70495, Washington, D.C. 20024, Maury D. Smith, Sterling G. Culpepper, Jr., David R. Boyd, P. O. Box 78, Montgomery, AL 36101, Estate of Robert B. Stewart, June L. Stewart, Executrix, 3607 McCurdy Street, Montgomery, AL 36111, Jones, Murray & Stewart, P.C. 272 Commerce Street, Montgomery, AL 36195 and Irene Smith 610 North Barnett, No.2, Dallas, Texas 75211, by placing same in the United States Mail, postage prepaid on this the 2nd day of February, 1987.

/s/ James E. Williams
OF COUNSEL

APPENDIX G-1

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

CATHERINE YVONNE STONE,	)	
	)	
Third Party Plaintiff,	)	CASE NO.:
VS.	)	CV-85-1316-K
	)	
GULF AMERICAN FIRE & CASUALTY COMPANY; AMERICAN STATES INSURANCE COMPANY; JONES, MURRAY & STEWART, P.C.; IRENE SMITH; THE ESTATE OF ROBERT B. STEWART, etc.,	)	
	)	
Third Party Defendants.		

NOTICE OF APPEAL

Now comes the Third Party Plaintiff, Cathy Yvonne Stone, by and through her undersigned attorney and appeal to the Supreme Court of Alabama from an Order of the Circuit Court of Montgomery County, Alabama dated July 14, 1987, and made final on October 22, 1987, granting Third Party Defendants Motion For Summary Judgment.

/s/ David Cromwell Johnson
DAVID CROMWELL JOHNSON
Attorney For Third Party Plaintiff
300 North 21st Street
Suite 900, Title Building
Birmingham, Alabama 35203
205-328-1414

CERTIFICATE OF SERVICE

I do hereby certify that I have mailed a copy of the foregoing on all counsel of record by placing same in the U.S. mail, first class postage prepaid, on this the 30 day of November, 1987.

/s/ David Cromwell Johnson
DAVID CROMWELL
JOHNSON

APPENDIX G-2

IN THE SUPREME COURT OF ALABAMA

CATHERINE YVONNE STONE, Third Party Plaintiff/Appellant VS. GULF AMERICAN FIRE & CASUALTY COMPANY; AMERICAN STATES INSURANCE COMPANY; JONES, MURRAY & STEWART, P.C.; IRENE SMITH Third party defendants/Appellees	S.Ct. No. 87-269

ON APPEAL FROM THE CIRCUIT COURT OF
MONTGOMERY COUNTY
CIRCUIT CASE NO.: CV 87-1316

BRIEF OF APPELLANT, CATHERINE YVONNE STONE
ORAL ARGUMENT REQUESTED

DAVID CROMWELL JOHNSON
Attorney For Appellant
300 North 21st Street
Suite 900, Title Building
Birmingham, Alabama 35203
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THOMAS W. BOWRON, II
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ISSUES FOR REVIEW

I. WHETHER THE TRIAL COURT ERRED IN DETERMINING THAT THE ADMINISTRATORS OF THE WILLIAMS ESTATE BREACHED NO DUTY BY INTENTIONALLY CONCEALING THE EXISTENCE AND IDENTITY OF A KNOWN NATURAL DAUGHTER AND POTENTIAL CLAIMANT OF THE INTESTATE.

II. WHETHER CATHERINE YVONNE STONE PRESENTED EVIDENCE AS TO EACH AND EVERY MATERIAL AVERMENT OF HER CLAIM OF FRAUD ON THE COURT?

REQUEST FOR ORAL ARGUMENT

This case presents a fact never before the Court. This is an action of fraud on the court, alleging fraud covering a period of 34 years. It raises the issue of the duty of administrators to present the existence and identity of all children to the Probate Court, to allow the Probate Court to determine the rights of the intestate's children to the

estate. This issue has never been addressed directly by this Court before this case. The appeal is the culmination of many years of litigation, both within this case and the earlier estate case. Likewise it is a case of factual complexity. Oral Argument would assist in the just resolution of the issues.

/s/ Thomas W. Bowron, II
THOMAS W. BOWRON, II

STATEMENT OF THE CASE

This is an appeal from a third party complaint alleging fraud on the court, filed by Catherine Yvonne Stone. The proceedings leading up to this appeal are briefly set out here.

a. *Randall Hank Williams, et al vs. Catherine Yvonne Stone*

This is an action for declaratory judgment that Cathy Stone has no right or entitlement to any proceeds of the Estate of Hiriam Hank Williams (hereinafter Williams, Sr.). (CR 135) The action is brought by Randall Hank Williams, the alleged son of Hiriam Hank Williams, deceased (hereinafter Williams, Jr.), Wesley Rose and Fred Acuff as trustees in liquidation for the stockholders of Fred Rose Music Inc. and Milene Music, Inc., which corporations had acquired rights in the musical compositions of Williams Sr. (These plaintiffs have been collectively referred to as the "Williams Group.").

The Williams Group demanded that the court make the following determinations:

1. Stone has never been adjudicated to be the child of Williams, Sr.

2. Stone is an adopted child and is therefore barred by §2617-6(e) from establishing paternity.

3. Stone is barred by statute of limitations, laches, waiver and estoppel from establishing paternity.

4. Court orders entered in the Matter of the Estate of Hiriam Hank Williams, Circuit Court of Montgomery County, Alabama, In Equity, Case No. 25,056 and The Matter of the Guardianship Estate of Randall Hank Williams, a minor, Circuit Court of Montgomery County, Alabama, In Equity, Case No. 27,960, are binding on Stone and bar her from now establishing paternity.

5. Randall Hank Williams is the sole child of Williams Sr.

The original complaint (CR 1) was amended twice. (CR 13, 135) Stone filed a motion to dismiss the Second Amended Complaint on the ground that there was no justiciable controversy. (CR 174) The motion was denied (CR 296), and Stone filed a Petition for Writ of Mandamus with this Court. On September 28, 1986, this Court denied the writ. *Ex Parte Stone*, 502 So.2d 683 (Ala. 1986).

On October 11, 1986, Stone filed her Answer to the Second Amended Complaint and a Counterclaim. (CR 314)

b. *Catherine Yvonne Stone vs. Randall Hank Williams*

This is the counterclaim to the action for declaratory judgment brought by the Williams Group. (CR 314) Stone requests that this Court enter a judgment of paternity that

she is the daughter of Williams Sr. and is due her proportionate interest in the proceeds of the estate of Williams Sr. Further, she requests that the Court order Williams Jr. to account for all monies received from the estate, and that a constructive trust be imposed on Williams Jr. for all monies received from the estate.

Williams Jr. filed an answer to the Counterclaim. (CR 470)

c. *Catherine Yvonne Stone vs. Gulf American Fire & Casualty Company, et al*

This is the third party complaint filed by Stone within ten days of filing her Answer and Counterclaim. (CR 361) Originally named as third party defendants are Irene Smith (the administratrix of the estate of Williams, Sr. from 1955 to 1969), the Estate of Robert B. Stewart (Robert Stewart served as the attorney for the estate of Williams Sr. from 1953 until it was closed in 1975, and as administrator of the estate from 1969 to 1975), Jones Murray & Stewart (the partnership or professional corporation of which Stewart was a member), Gulf American Fire & Casualty Company (the insurance company which bonded the administrators of the estate of Williams Sr.), and American States Insurance Company (the successor in interest of Gulf American Fire & Casualty Company). The Estate of Robert Stewart was dismissed with prejudice on motion of Cathy Stone on March 25, 1987. (CR 961)

Count One of the Third Party Complaint, alleges that Smith, Stewart and the law firm of Jones Murray & Stewart through one of its partners, Robert B. Stewart, committed fraud on the court starting in 1953 by hiding the fact of Stone's existence from the Montgomery County

Probate Court and Circuit Court, thus precluding determination of her rights in the Estate of Williams Sr.

Count Two alleges that all third party defendants had a special, confidential and fiduciary relationship with Stone, and as a result of this relationship, there was a duty to disclose to her facts sufficient to evaluate and pursue her lawful interest in the Williams Sr. estate.

In Count Three, Stone alleges that all third party defendants engaged in a conspiracy to defraud her and the court, so that neither the court nor Stone could seek a determination of paternity and interest in the estate of Williams Sr.

Count Four is an action against the sureties only, for payment on the administrators, bond if Stone prevails against the administrators on any of the first three counts.

Gulf American and American States filed a motion to dismiss the complaint on the grounds that it fails to state a cause of action on which relief can be granted and that all claims against these third party defendants are barred by the statute of limitations. (CR 499)

Jones Murray & Stewart filed an answer raising as affirmative defenses failure to state a claim upon which relief can be granted, laches, statute of limitations, collateral estoppel, res judicata, waiver and estoppel. (CR 494)

Irene Smith filed an answer raising the same defenses as Jones Murray & Stewart. (CR 626)

All third party defendants filed a motion for summary judgment, based in part upon the Motion for Summary Judgment filed by Williams Jr. and Rose and Acuff

on the original complaint and the counterclaim. (CR 897, 899, 903)

On April 16, 1987, the Honorable Mark Kennedy heard oral arguments on all Motions for Summary Judgment, and on July 14, 1987, issued the "Final Order on Motions for Summary Judgment." (CR 1107) The trial court ruled against Stone on all issues and claims except one. The single issue left open was whether "Williams Jr. is the sole child of Williams, Sr." (CR 1119) The court set that issue for trial. The order was not a final order as to the other issues and claims.

d. *The trial on the original Complaint.*

On August 26, 1987, the Williams Group filed a Petition for Writ of Mandamus, Prohibition, or other Extraordinary Relief with this Court, raising as the issue whether the trial court, after entering the July 14th order, still had jurisdiction to proceed with a trial on the issue of biological paternity. The Petition was denied on September 1, 1987. *Ex Parte Williams, Rose & Acuff*, S.Ct.No. 86-1512, Sept. 1, 1987.

The case was set for trial on September 2, 1987. The parties proceeded to trial on the original complaint filed by the Williams Group. On October 26, 1987, Judge Kennedy entered his final order "that Hank Williams Jr. is not in fact the only natural child of Hank Williams, Sr. in that Defendant Catherine Yvonne Stone is also a natural child of Hank Williams, Sr" (CR 1165)

This appeal was filed on December 2, 1987. The appeal is from the trial court's July 14, 1987 order granting

the Third Party Defendants Motions for Summary Judgment. (CR 1166)

STATEMENT OF THE FACTS

a. *The undisputed facts from the trial court's order*

Catherine Yvonne Stone adopts the undisputed facts set out in Judge Kennedy's "Final Order on Motions for Summary Judgment" (CR 1107), with annotations to the record on appeal:

On October 15, 1952, Williams, Sr. and Bobbie W. Jett entered into a written agreement relative to the custody and support of an unborn child that was being carried by Jett. (CR 967) The agreement was prepared by and executed in the presence of Robert B. Stewart, an attorney in the general practice of law in Montgomery County, Alabama.

The agreement stated that Bobbie W. Jett was pregnant and that Williams, Sr. may have been the father of said child. It was obviously the desire of the parties to agree to the support and custody of the child through the provisions of the agreement that they entered into. The agreement called for Williams, Sr. to provide room and board for Jett up until delivery, to provide periodic support for Jett pending the birth and to pay for all necessary expenses incurred for the actual delivery.

Jett was to be provided with a one way ticket to California by Williams, Sr. within 30 days after the birth of Jett's child and physical custody of the child would vest in Williams, Sr.'s mother, Mrs. Lillian Williams Stone. Specifically the agreement provided:

After the birth of said child, both parties agree that it shall be placed with Mrs. W.W. Stone of Montgomery, and that she shall have full custody and control of said child for a period of two years after its birth and that during said time the said Hank Williams will provide and pay for a nurse and will pay all necessary expenses for clothing, food, medical care, and other attention which is required by the child during said two year period. . . . Beginning at the third birthday of said child, its custody and control shall vest in the said Hank Williams and the child shall live with him continuously and be wholly and completely supported by him, and cared for by him until it reaches its fifth birthday at which time the custody of the child shall be divided between both parties; . . . The responsibility for the support of said child shall be in Hank Williams both during the times when he has custody of the child and when it is visiting the mother.

In view of the fact that the paternity of said child is in doubt and is not to be in any way construed as admitted by this agreement which is made solely because of the possibility of paternity, the said Bobbie W. Jett does hereby release the said Hank Williams from any and all further claims arising out of her condition or the birth of said child.

Williams, Sr. died intestate on January 1, 1953.

Lillian Williams Stone filed for Letters of Administration for the Williams estate in the Probate Court of Montgomery County, Alabama in January 1953. In her petition, she listed the heirs and distributees of the intestate estate as:

Billie Jean Jones, "who states she is the widow.",

Randall Hank Williams, Jr.,

Mrs. Irene Williams Smith, a sister

Elonzo H. Williams, father and

Lillian S. Stone, mother

The Petition was prepared by Robert B. Stewart, the same attorney who had prepared the Williams, Sr./Jett agreement several months earlier.

Five days after the death of Williams, Sr., Jett gave birth to Stone who was given the name of Antha Bell Jett. By agreement, the baby was left with Mrs. Lillian Stone and Jett left the state.

On or about January 28, 1953, (CR 970) Lillian Stone contacted the Montgomery County Department of Pensions and Security about the possibilities of adopting the baby. In explaining how she came to have physical custody of the baby it is probable to assume as correct that she reported to them that Jett was the mother of the child and that her son, Williams, Sr. was the father. (CR 970)

The record of these proceedings seems to indicate that Lillian Stone, on several occasions told others that the baby had been fathered by her son.

In July of 1953 a petition for adoption was filed by Lillian Stone and her husband for the adoption of Antha Bell Jett (Stone) in the Probate Court of Montgomery County, Alabama. (CR 972) An interlocutory order of adoption granting temporary custody of Stone to William W. Stone and Lillian Stone was issued on September 21, 1953. The Montgomery County Department of Pensions and Security began supervision on that date and continued the same until a final decree of adoption was entered on December 23, 1954. (CR 979) At that time an adoptive

parent/child relationship between William Wallace Stone and Lillian Williams Stone and Antha Bell (Stone) was established. The child's name was changed to Catherine Yvonne Stone.

Lillian Williams Stone died on February 26, 1955. Stone's adoptive father was unwilling to continue the parent child relationship that had been established through the original adoption decree and Stone was made a ward of the State of Alabama by decree of the Juvenile Court of Montgomery County, Alabama on April 22, 1955. (CR 990) She was placed in the home of Mrs. Ilda Mae Cook as a foster child.

In February of 1956, Stone was transferred by the Montgomery County Department of Pensions and Security to Mobile, Alabama to the home of George Wayne and Mary Louise Deupree. Although it was initially another foster home placement, the Deupree's ultimately instituted adoption proceedings and on April 23, 1959 Stone was again adopted. (CR 991) Thus, a second adoptive/parent child relationship was established for Stone, this time with Mr. and Mrs. Deupree. Stone's name was then changed to Cathy Louise Deupree.

The record contains correspondence between the attorney for the estate, Robert B. Stewart, and one Harold Orenstein, legal counsel for Wesley Rose. The correspondence was transmitted in 1962 and it contains discussions concerning the status of Stone. The Orenstein letter in pertinent part reads: (CR 1031-33)

> D. *CATHERINE YVONNE STONE* – From the documents which you have furnished to me, Catherine Yvonne Stone . . . was returned to the State of Alabama Welfare Department after the

> death of Lillian Stone, and then re-adopted by persons unknown. Nowhere in the documents is there an indication of the names of the natural parents of Catherine Yvonne Stone. We assume that these documents were the ones that you mentioned had been sealed and could never be re-opened. . . . It would appear that some token payment to the State of Alabama Welfare Department . . . on behalf of this child may or may not be indicated. There is no way of evaluating now what a share of the renewal copyrights would be worth and no one could predict their valuation. We feel that a nominal payment might forever cut off the right of this child to the renewals.

In response, Stewart wrote in pertinent part: (CR 1034-35)

> None of this would seem to affect the child's statutory right to copyright renewal. (Referring to the right of Stone to receive a homestead share in the Lillian Stone estate). The adoption might affect any right to which the child was entitled through the father. . . . (W)e may be faced with a difficult problem, and certainly one we would not want to litigate.
>
> As possible alternatives we can:
>
> a. Consider that by the adoption all rights under the renewal statute have been lost.
> b. Try to explain the matter to our Welfare Department which does not want the child to know its background, but which would probably feel a duty to protect any right the child might have, and hope for a cooperative settlement and court approval.
> c. Petition the court for approval of an agreement between Acuff-Rose and the Guardian, requesting that a guardian ad litem be appointed for Randall and another for all other possible minors who might

> claim a similar renewal right. If we use this procedure, the guardian ad litem will have to know what we are talking about, and might be vigorous in asserting this right. Much would depend on the person appointed, over which we have no control.
>
> I do not believe we can make a token payment to the Welfare Department since any payment which would bar a later claim would have to be made with the understanding of the facts by the Court.

It was not until 1967 that any Court having jurisdiction over the estate of Williams, Sr. was advised of the possibility that Williams, Sr. may have died leaving a child other than Williams, Jr. That fact surfaced in two actions then pending before the Circuit Court for Montgomery County, Alabama.

In that year, Audrey Williams, the mother of Williams, Jr. filed a petition for final settlement in the Williams, Sr. estate and a petition to vacate and for accounting and transfer in the guardianship estate of Williams, Jr., then a minor. At that time, Irene Smith was the administratrix of the Williams, Sr. estate and the Alabama guardian of Williams, Jr. in the guardianship estate. In the capacity as aforementioned, Smith filed her response to the petitions filed by Audrey Williams. (CR 1036-1040) It was in those answers that the question of existence of and legal rights of Stone and any other unknown heirs were first raised. In each proceeding the Court appointed Drayton N. Hamilton, Esq. to be the guardian ad litem to represent the interest of any minor person(s) who might have an interest in the matters involved in the proceedings.

The record reflects that Hamilton had previously served as guardian ad litem for Stone in proceedings relating to the estate of Williams Sr.'s mother, Lillian Stone, in 1963. It appears, however, that at that time Hamilton knew only that she was an adopted child of Lillian Stone. According to Hamilton, the first time that he became aware that Stone may possibly have been fathered by Williams, Sr. was after he had been appointed guardian ad litem in the proceedings initiated by Audrey Williams.

In 1967 and 1968 Stone lived in Mobile with her adoptive parents, Mr. and Mrs. Deupree. The Deuprees knew of the pendency of the proceedings in Montgomery and had conversations with Hamilton concerning those proceedings. The record seems to establish that Stone's adoptive parents were not interested in pursuing the matter on behalf of their daughter. Hamilton continued his representation and actively participated in all phases of the proceedings.

A trial was conducted on the merits before Honorable Richard P. Emmet of the Circuit Court of Montgomery County, Alabama. At trial Hamilton argued that Stone was the legitimate daughter of Williams, Sr. through the operation of law as applied to the October, 1952 agreement between Williams, Sr. and Jett. He posited that the agreement met the statutory requirements for legitimation in the State of Alabama. In the alternative, he challenged existing state law on constitutional grounds. In summary he argued: (CR 1067)

> We conclude that the Court must determine that the child . . . is the natural child of Hank Williams; secondly, that the said child is the legitimate daughter of Hank Williams under Alabama Law and the facts of the case; thirdly, that even if the child has not been legitimated she should share in the estate as the natural daughter of Hank Williams and lastly, that there can be but little question that this child has a present right under the Copyright Laws of the United States to share in the income from the Hank Williams compositions . . .

The Court issued its first Order on December 1, 1967. It was in the Williams, Sr. Estate case. (CR 1069) In the Order the court found as follows:

> The principal issue raised by the Petition . . . and by the Answer . . . is the right of Randall Williams to inherit from his father's estate as the sole beneficiary. The pleadings, the testimony, and the exhibits raise the question of the right of another child to receive a part of the assets of this estate as a natural child which has been legitimated (sic) under Alabama's statutory procedure. The Guardian Ad Litem has also sought a determination by the Court that this child, even if not legitimated as required by statute, is a natural child of Hiriam Hank Williams and as such has certain right under the Federal Copyright Statutes. *The Court does not believe it is necessary to make this latter determination* (emphasis added).
>
> In the opinion of the Court, there has not been sufficient compliance with the requirements of Section 11 of Title 27 of the Code of Alabama to give the child in question any right of inheritance from Hiriam Hank Williams or to receive any part of his estate. The Court is further of the opinion that under all the evidence

heard and considered by the Court, Randall Williams is the sole heir and only distributee of the Estate of Hiriam Hank Williams. . . .

. . . 2. That Randall Williams is the sole heir of his father, Hiriam Hank Williams, and is the only beneficiary of his estate now administered by this Court.

The Order of the Circuit Court in the guardianship estate case was issued on January 30, 1968. (CR 1073) In that order, the Court went further and made additional findings and drew additional conclusions of law relative to the status of Stone. The Court found:

Addressing itself to the question of the child born to one Bobbie W. Jett, the Court finds from the evidence the child does not have any right in the copyrights or the renewal of those rights of the late Hiriam (Hank) Williams.

The Court is impressed with the argument of the Guardian Ad Litem. The Court adopts the sound reasoning advanced in brief that the time is long past due when illegitimately offspring should be afforded adequate property rights. The common law is severe in calling such offspring a "non-person" or a "person of no blood".

However, the evidence in this case is without dispute, this off spring of one Bobbie W. Jett is not now a "person of no blood".

The evidence shows the child has been . . . adopted . . . By fiction of law only but with the same effect as if natural, the child has been infused with the blood of the adopting parents. The evidence shows the final decree of adoption occurred almost ten years ago. The evidence shows the adopting parents were fully informed by the state authorities of these proceedings.

> The evidence shows the adopting parents chose not to pursue any action in regard to these proceedings.
>
> . . . It is, therefore, ORDERED, ADJUDGED and DECREED by the Court as follows:
>
> . . . 2. That the child born to one Bobbie W. Jett is not an heir of the late Hiriam (Hank) Williams within the meaning of the Copyright Law.

Neither the December 1, 1967 Order in the Estate proceeding nor the January 30, 1968 Order in the Guardianship Proceedings was appealed, although the Guardian Ad Litem sought permission from the trial court to make such an appeal. Those Orders therefore became final pursuant to applicable Alabama Law.

Following the death of Williams, Sr., Fred Rose Music, Inc. and Milene Music, Inc., and their predecessors in interest paid to the estate of Williams, Sr. royalties arising from the usage of the songs composed by Williams, Sr. Following the 1967 and 1968 Orders of the Circuit Court for Montgomery County, and in reliance thereon, royalties were paid to Williams, Jr. as the sole heir of Williams Sr.

It is interesting to note that even in the light of the Circuit Court Orders, Robert Stewart, who was appointed as the Administrator in 1969, presumably out of an abundance of caution, continued to set aside money for Stone. In a series of letters to the attorney for Williams, Jr., Stewart stated that "the last two distributions to Randall . . . were actually an encroachment on the one-half of the Estate which could conceivably be claimed by the child." In April of 1974, Stewart advised counsel for Williams, Jr.

that Stone had claimed her homestead which had been set aside for her in the Lillian Stone estate. Stewart wrote that Stone's "ancestry may well be reasonably obvious to her, and further trouble may ensue." The Estate of Williams, Sr. would be closed in August of 1975 without further incident relative to the issue of Stone's rights, if any, to a share in said estate.

b. *Appellant's additional facts*

Appellant adds these facts which were omitted from Judge Kennedy's final order:

The trial court failed to recite that part of the October 15, 1952 agreement between Williams, Sr. and Bobbie Jett wherein Williams, Sr. is referred to as "the father". (CR 967) Williams, Sr. signed the agreement as written.

> During said two year period, that the child is in the custody of Mrs. Stone, both the *father*, Hank Williams and the said Bobbie W. Jett shall have the right to visit said child at convenient and reasonable hours. Beginning at the third birthday of said child, its custody and control shall vest in the said Hank Williams and the child shall live with him continuously and be wholly and completely supported by him, and cared for by him, until it reaches its fifth birthday at which time the custody of the child shall be divided between both parties; that is, during the winter months or school months, the child shall remain with Hank Williams and during the summer months or school vacation months, the custody shall be in the mother. The responsibility for the support of said child shall be in Hank Williams both during the times when he has custody of the child and when it is visiting with the mother. During the time the child is in the custody of the *father*, Hank Williams, the

> mother shall have the right to visit it at reasonable times and at reasonable hours, during the time it is in the custody of the mother during the summer months, the *father* shall have the same privilege of visitation.

Catherine Yvonne Stone was not adopted until December 23, 1954, when she was almost two years old.

During the adoption investigation conducted by the Department of Pensions and Security in 1953, Irene Smith, sister of Williams Sr. was contacted by the social workers at her home in Virginia. She reportedly told the workers that "her deceased brother is the natural father" of Antha Belle Jett. (CR 981) She willingly provided information about Williams Sr. to the County social workers without denying that he was the father of the baby. (CR 982)

When Lillian Stone died in February 1955, Irene Smith reneged on her earlier promise to the social workers that she would take care of Cathy Stone if anything happened to Mrs. Stone. (CR 981, 983) She apparently had misgivings about her original promise and told the County workers that the child would be better off if adopted by someone unrelated to the Williams/Stone family. (CR 984-986) She had discussed these thoughts with Robert Stewart before her mother's adoption of the Jett child, telling him that it would be better for the child and its parents if they knew nothing of her origin at all. (CR 987) Irene Smith also related to the workers that she did not believe her father, Mr. Stone, would be able to care for the baby on his own.

Although Irene Smith was Administratrix of the Estate of Williams Sr. from 1955, she did not advise the

court of the existence of the Jett child until 1967. In 1967, she filed an answer to Audrey Williams petition and alleged that there may be "unknown minors who may have or claim any interest in said estate [the Williams Sr. estate]." (CR 1040) The only minor ever discovered by Drayton Hamilton, the Guardian Ad Litem appointed to represent the "interests of any other persons who may have an interest in or claim to the property or assets of the Williams Sr. estate or the copyrights or renewals" was a "girl child born to the said Bobbie W. Jett on or about January 6, 1953 in Montgomery, Alabama." (CR 1043) Prior to 1967, there had been no mention in the court records of any mention of Antha Belle Jett, Catherine Yvonne Stone or "a girl child."

ARGUMENT

I. THE ADMINISTRATORS OF THE ESTATE OF WILLIAMS WERE CHARGED WITH A DUTY TO NOT WILLFULLY CONCEAL THE EXISTENCE AND IDENTITY OF A NATURAL CHILD AND POTENTIAL HEIR OF THE DECEASED.

The trial court granted the third party defendants' Motions for Summary Judgment on the ground that Catherine Yvonne Stone failed to state a cause of action of fraud on the court. Specifically, the trial court held:

> As to the third party claim filed by Stone, the Court is of the opinion that the main if not the entire thrust of the complaint revolves around an argued duty to disclose and the willful and or fraudulent failure to do so. In 1953 Stone was not an heir to the estate of Williams, Sr., and she could not have been established as such under then existing law. If the existence of Stone had

> been made known to the Court by any of the third party defendants, it is assumed that the Court in adjudicating her claim would have applied the law as it then existed and would therefore have ruled that her claim was at that time invalid. The only obligation or duty that could be foreseeable in a situation such as exists in this case would be a requirement that the third party defendants act in good faith according to the law of the State of Alabama as it existed at that time. The Court deems it unreasonable to impose upon them the duty to anticipate or foresee what the law should or might become in the future. At the time that the alleged fraudulent concealments purportedly occurred, full disclosure to the Court or to interested third persons would have been superfluous. Therefore, the Court is of the opinion that the third party complaint does not state a cause of action for which recovery can be had.

The trial court incorrectly held that there was no duty upon the administrators and third party defendants to disclose to the Court the existence and identity of Catherine Yvonne Stone as the daughter of Williams, Sr. The third party defendants and the trial court make several assumptions in reaching this conclusion. It is assumed that the trial court would not have determined the child to be an heir of the estate. It is further assumed that the child had little or no evidence to prove that she was the child and a legal heir. It is not the responsibility or the right of the administrators and the attorney for the estate to make a legal determination that a child is not an heir of the intestate – that privilege rests with the Court. Furthermore, the administrators should not assume the existence or nonexistence of evidence to support the claim for heirship of the child. Their obligation is to present the

child to the court so that evidence can be obtained and presented to the court for its determination on the issue. In these respects, the third party defendants have failed. In fact, the evidence is that the third party defendants intentionally and willfully concealed from the Montgomery County courts a child who was known by them to be the natural daughter of Williams, Sr.

The Supreme Court of Wisconsin, in *In Re Bailey's Estate*, 233 N.W. 845 (Wis. 1931), held that the administratrix had fraudulently withheld from the Probate Court the existence of an illegitimate child of the intestate. The illegitimate child filed a petition to set aside the final settlement and prove her claim. The court noted that there was evidence presented of a bastardy charge involving the intestate and the illegitimate child. Although the proceedings resulted in a written settlement, no documentation was produced. The mother of the child testified that the writing included a statement by the intestate that the illegitimate child was his child. The governing Wisconsin statute stated that an illegitimate could inherit from the father if the deceased "in writing signed in the presence of a competent witness, acknowledge himself to be the father of such child."

The administratrix testified that she did not name the child in her petition because "she did not think Ruth was an heir of the deceased." She further testified that "she did know that they were trying to make believe that Ruth was his child." The Court held:

> The evidence in the case leaves the impression that Cora [the administratrix] must have known of the circumstance of the deceased having been arrested in the bastardy proceeding, that she

> must have known that he settled, and that she also must have known that it was generally understood in that community that Ruth was regarded as the illegitimate child of the deceased. She says she knew "that they were trying to make believe she was his child." We have no difficulty in reaching the conclusion that she was conscious of the true situation and that it was her duty to reveal it to the court. Her omission to inform the court of the facts was passive, if not active, fraud.

In Re Bailey's Estate, 238 N.W. at 848.

Likewise, in both *In Re Flowers*, 493 So.2d 950 (Miss. 1986) and *In Re King*, 501 So.2d 1120 (Miss. 1987), the Supreme Court of Mississippi recognized and applied the very duty which the appellant today asks this Court to pronounce. See also *Succession of Hearn*, 412 So.2d 692 (La. App. 1982)

In the *Matter of the Estate of John Walden Flowers*, 493 So.2d 950 (Miss. 1986), the Supreme Court of Mississippi *ex mero moto* addressed the "glaring" infirmity of a petition for letters which failed to disclose the known natural daughter of the deceased. That Court observed that the administrator has negligently, if not intentionally, failed to disclose the existence of the natural daughter of the deceased. The case was remanded to the trial court to determine whether the omission was intentional and thus fraudulent. The Court noted that if the omissions were occasioned by fraud prior notice publications would be annulled.

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1) Footnote two of *In Re King*, 501 So.2d 1120 (Miss. 1987) indicates that the daughter in *Flowers* was illegitimate.

Speaking to the duty owed potential heirs by the administrator, the *Flowers* Court noted:

> Obviously, the law cannot require an administrator to conduct extensive genealogical research, but where, as here, he has actual knowledge that another person with a claim to heirship exists, the situation is very different. By failing to disclose Mrs. Campbell's existence to the court, Deshazer made a serious misrepresentation.
>
> Whether or not the misrepresentation amounted to a fraud on the court is a question of fact unsuitable for resolution here.

Id. at 951.

More dramatic than the scenario presented in *Flowers* is that the administrators in the case at bar, with the help of a lawyer, knew of the existence of the natural child of the deceased, but nevertheless, actively and intentionally concealed her existence and identity from the Court. Under these facts, how can it be seriously postulated that no duty to disclose existed; particularly when one considers that the relationship between an administrator and heirs as well as creditors, has been recognized as a fiduciary relationship. 33 C.J.S. Executors and Administrators § 142 (1942)

Directly on point is the case of *In Re King*, 501 So.2d 1120, (Miss. 1987). Therein, the Supreme Court of Mississippi expressly recognized that "an administrator is under an affirmative duty to disclose to this Court the existence of known potential heirs and claimants. *King*, at 1123. The *King* Court reversed the findings of the lower court and held that an illegitimate child of the deceased, who was fraudulently hidden from the Court by the

administrator, was not barred by any statutory time restrictions. While the Mississippi court ultimately flip flopped on these positions in the case of *Leflore v. Coleman*, [Miss. M.S. 56631, 56677 February 24, 1988] the appellant considers the reasoning set forth in *Flowers* and *King* to be eminently correct.

The policies of timely and just disposition of estates as well as ensuring certainty of title which passes through inheritance, are equally served by requiring the administrator to disclose both known heirs and potential heirs; at the very least the known children of the deceased. Ensuring that all potential litigants are present at the initial stages of administration obviously provides all with a just and fair opportunity to settle issues thereby forestalling later claims to heirship and clouds upon title.

Further, an administrator is not vested, nor should be vested, with the right to determine heirship *extra* judicially. For instance, consider the instance where a child is not disclosed because the administrator assumes the child is either not of the blood of the deceased, or if so, is illegitimate. The child is thereafter precluded from establishing a blood relationship; written acknowledgment; a marriage and recognition, or a prior successful paternity action. To find no duty on the administrator to disclose known illegitimates is to allow the administrator, in many cases a non-lawyer, to judicially resolve all issues presented by a quagmire of facts and alternative theories of heirship.

Lastly, to find no duty to disclose known potential heirs is to invite and encourage fraud on the Court and estates. Counsel can envision no other area of the law

where fraud is either allowed, encouraged, or as in this case, rewarded.

The common sense approach of notifying potential heirs is embedded within certain provisions of the applicable Probate Code. For example, under Code of Alabama 1940 Title 61 § 48, an executor is required to notify the widow and next of kin before an application for probate could be heard. This requirement was engrafted so to allow all "interested parties", who would possibly inherit under intestary, an opportunity to contest the will. *Knox v. Paull,* 95 Ala. 505, 11 So. 156. Should an intestate preceding be more restrictive in allowing "interested parties" to assert a claim.

In sum, while not expressly set out by statute in this state, a duty to disclose known potential heirs is recognized by other states, sound in its policy, and embedded implicitly within the applicable Alabama Code. The trial court erred in finding to the contrary. This Court should not now be reluctant to express such a duty and thereby thwart the fraud and injury which has befallen Catherine Yvonne Stone.

II. CATHERINE YVONNE STONE DID PRESENT EVIDENCE AS TO EACH AND EVERY MATERIAL AVERMENT OF HER CLAIM OF FRAUD ON THE COURT.

A fraud on the court is a separate cause of action recognized in Alabama. In *Duncan v. Johnson,* 338 So.2d 1243 (Ala. 1976), the plaintiff filed suit in equity and alleged a misrepresentation of fact to the court. This Court recognized that the plaintiff had stated a cause of

action even though the action was not a direct attack on an earlier judgment.

> Even though a decree is based upon the false averment of a material fact and false testimony as to a material fact, it is not necessarily subject to vacation other than by a direct attack upon it in due course. For the decree in this case to be subject to successful attack, the legal fraud from which it resulted must consist of more than false pleading and false evidence, as repugnant as each is to the administration of justice. Otherwise, an action brought to invalidate the judgment or decree would merely constitute a retrial of the issues between the parties or their successors in interest. Nevertheless, as here, when fraud constitutes the root of the evil, when it consists of an imposition upon the court of a case over which without the fraud it would have no jurisdiction, when without the fraud the case would have no germ of life as a judicial proceeding, and the fraud from its inception to its perpetration is that of the one procuring the judgment, the one injured thereby is not necessarily limited to a direct attack upon it.
>
> > But where the jurisdiction of the court of law is acquired by the fraudulent concoction of a simulated cause of action, the fraud itself to be consummated through the instrumentality of a court of justice, the protection of the court demands that there should be a remedy. We can conceive of no worse reflection upon a judicial system, no lowering of its dignity and of the respect due to its findings more regrettable than that the tribunal of justice may become an impotent agency of fraud against those who look to it for protection and who are free from fault or neglect in the premises.

Duncan v. Johnson, 338 So.2d at 1250-51, quoting *Bolden v. Sloss-Sheffield Steel & Iron Company*, 215 Ala. 334, 335, 110 So. 574-575 (1925).

The only fraud which will support the action is "extrinsic" fraud.

> The fraud here available must be what is termed extrinsic; that is, such as was instrumental in procuring the rendition of the decree, or collateral to the matter or question which was tried and determined by the judgment in question; *but when a party is prevented from asserting his rights by the fraud of his opponent, equity will interfere.* (emphasis added)

Anderson v. Anderson, 250 Ala. 427, 430, 34 So.2d 585 (1948).

The Alabama courts have succinctly and repeatedly defined the difference between extrinsic fraud and intrinsic fraud, and the consequences of each.

> The jurisdiction extends to the vacation of the judgments or decrees of courts which have been *procured* by fraud. But the final judgment or decree of a court of competent jurisdiction is impeachable only for *actual fraud* in its procurement.
>
> It seems to be a well-established doctrine that the acts for which a court of equity will set aside a judgment of a court of competent jurisdiction have relation to frauds *extrinsic or collateral* to the matter tried by the first court, and not to a fraud in the matter on which the decree was rendered. (emphasis in original)

Hogan v. Scott, 186 Ala. 310, 313-14, 65 So. 209 (1914). More specifically:

> If a cause of action is vitiated by fraud, this is a defense which ought to be interposed to the granting of the judgment or decree, and, unless the interposition of this defense is prevented by fraud, it cannot be asserted against he [sic] judgment; for judgments are impeachable for those frauds only which are extrinsic to the merits of the case, and by which the court has been imposed upon, or misled into a false judgment. The fraud must be practiced in the rendition or procurement of the judgment or decree.

Rittenberry v. Wharton, 176 Ala. 390, 401-02, 58 So. 293 (1912). Extrinsic fraud can be proven by showing that the complainant was prevented from discovering the defense of the opposite party, or discovering the action, by the conduct of the opposing party. *Eskridge v. Brown*, 208 Ala. 210, 94 So. 353, 354 (1922).

> It may be stated as a general rule that where the action of the successful party in probate proceedings, in concealing or failing to disclose to the court the existence of a person interested in the estate, amounts to fraud of any kind, and the defrauded person has thereby been prevented from learning of the proceeding or asserting his claim therein, the fraud is extrinsic, rather than intrinsic, and such person is entitled to equitable relief against the decree of the probate court.

Annot., Concealment of or failure to disclose existence of person interested in estate as extrinsic fraud which will support attack on judgment in probate proceedings, 113 A.L.R. 123.

To state a cause of action of fraud on the court, the plaintiff must allege that the defendants committed a fraudulent act, that the fraud was extrinsic or collateral to the matter tried by the court, and the plaintiff is without

fault or neglect on his part. Plaintiff has presented evidence to all these elements.

As early as September 1952, and certainly by the time the Petition for Letters of Administration were filed in January 1953, Lillian Stone knew that the baby conceived by Bobbie Jett was William Sr.'s child. She had witnessed the signing of the October 15, 1952 agreement between Williams Sr. and Bobbie Jett in Robert Stewart's office. (CR 998) Less than four months later, on January 28, 1953, Lillian Stone reported to Public Welfare that the child she wanted to adopt was her deceased son's child. (CR 970)

When Lillian Stone was appointed administratrix of the Estate of Williams Sr., and throughout her service in such capacity, she knew that Cathy Stone was the natural daughter of Williams Sr. Yet, she did not list Cathy Stone on her petition for letters of administration, did not retain separate counsel or ask for a guardian ad litem for the child, and did not reveal her existence, identity or relationship to the court. As the administratrix of the estate, she had a duty to report all potential heirs or claimants and interested parties to the court. It was not her decision to determine who was in fact a legal heir.

At the time of the filing of the petition for letters of administration, Catherine Yvonne Stone was not adopted. The only relationship which existed was one between Stone and Williams, Sr. and Bobbie Jett. She was not adopted by anybody until December 23, 1954.

Third party defendants argue that they had no duty to name Catherine Yvonne Stone on the petition because she was not a legal heir under the law as it existed in 1953. However, Lillian Stone as the administratrix listed

Billie Jean Jones, "who states she is a widow" in the petition as an heir. If Lillian Stone was obligated to name Billie Jean Jones, who had at most a potential claim, then she was also obligated to identify the Jett child in the petition. The determination of who was a widow and who was a child was for the court. The only obligation that the administratrix had was to put all potential claimants before the court. Then the court could give notice to them to prove their claim. Billie Jean Jones was given the opportunity to prove she was the widow, but the child was given no opportunity to prove her relationship.

Robert Stewart, attorney for the estate of Williams, Sr. from the date it was opened until it was closed, and administrator from 1969 to the closing in 1975, also knew throughout the duration of the estate that Cathy Stone was the daughter of Williams, Sr. Evidence of Robert Stewart's knowledge includes the fact that he drafted and witnessed the October 15, 1952 agreement between Williams, Sr. and Bobbie Jett, wherein Williams, Sr. is referred to as the "father" of the child carried by Bobbie Jett. (CR 994-96)

Then, in 1962, there was the correspondence between Robert Stewart and Harold Orenstein referenced by the trial court in its findings of fact, which indicates that Robert Stewart believed Cathy Stone to be the daughter of Williams, Sr. (CR 1034-35)

Finally, in 1967, Robert Stewart, as attorney for Irene Smith, then administratrix of the estate of Williams Sr. and the legal guardian of Williams, Jr., filed two answers in the Circuit Court of Montgomery County, Alabama, in which he raises the possibility of other minors who may

have an interest in the Williams, Sr. estate. The only minor ever discovered was Catherine Yvonne Stone.

Although Robert Stewart knew of the existence, identity and relationship of Catherine Yvonne Stone to the estate of Williams, Sr., he too failed to inform the court of her identity and existence until 1967.

Irene Smith, sister of Williams, Sr. and administratrix of the estate from 1955 to 1969 also failed to identify the child to the court until 1967, although she too was aware of the existence of the child and her relationship to Williams, Sr. Her letter of April 1953 clearly indicates her intent that the child never be found or connected to the family. (CR 987)

Finally, even after the 1967 court order, the estate, through its attorney, Robert Stewart and its administrators, Irene Smith and Robert Stewart, continued to divide the proceeds, giving half to Williams, Jr. and half to the Jett child, in case she should make her claim. Robert Stewart continued to worry that the fraud would be discovered and as late as 1974 was discussing it with other lawyers involved in these matters. They knew the order in 1967 was procured through fraud and never wanted that fact discovered. No one ever told the child that she had missed the opportunity to prove her claim in 1953, that her rights had been adjudicated in 1967 to her detriment, or that her identity had been intentionally concealed from her and the court for years.

The material elements of the cause of action of fraud on the court are a fraudulent act, fraud which is extrinsic or collateral to the matters determined or tried by the court, and no fault or neglect on the part of the plaintiff.

Catherine Yvonne Stone has presented evidence on all the material elements of the cause of action.

The third party plaintiff, Catherine Yvonne Stone, has stated a cause of action for fraud on the court and has presented evidence to support all material averments of the claim. It was error for the trial court to have granted the Motions for Summary Judgment filed by the third party defendants.

CONCLUSION

WHEREFORE, THE ABOVE PREMISES CONSIDERED, Appellant, Catherine Yvonne Stone, respectfully requests that this Honorable Court reverse the judgment of the Circuit Court of Montgomery County entered on the Third Party Complaint and remand the cause for further proceedings.

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CERTIFICATE OF SERVICE

I do hereby certify that I have mailed a copy of the foregoing on all counsel of record by placing same in the U.S. mail, first class postage prepaid, on this the 30th day of March, 1988.

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